IMT Nuremberg Archives

H – 156

International Court of Justice

595 file

Official Transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britian and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 13 June 1946, 1045-1700, Lord Justice Lawrence, presiding.

THE PRESIDENT: The Tribunal has considered the question of the time to be taken by counsel in their concluding speeches. The provisions of Article 18 of the Charter directing the Tribunal to confine the trail strictly to an expeditious hearing must be observed, and counsel clearly could not be permitted to speak at any length they choose. Necessity dictates that there must be some limitation, or this already lengthy trial might be prolonged beyond all reason.

The Tribunal understands that the prosecution will voluntarily limit their concluding speeches to three days in all, and some voluntary limitation should be made by counsel for the defense. The evidence for the defendants has been fully heard in great detail, and what is now needed is not a detailed analysis of the evidence, but a concise review of the main matters.

The Tribunal wishes to make clear that no admission will be inferred from failure to mention any particular matter in argument. On this view, in the opinion of the Tribunal, the speeches of the counsel for the defense -- including the speech to be made on behalf of all the defendants on the submission of law -- should be concluded in fourteen days in all. This will allow the defense double the time taken by the prosecution, both in opening and in summing up. By mutual arrangement between counsel, these fourteen days could be apportioned as they think fit, and the Tribunal would prefer that they make the apportionment rather than make the apportionment itself.

The Tribunal expects, therefore, that counsel for the defense will prepare their speeches in accordance with what I have said, and will advise the Tribunal as soon as possible of the apportionment of time that they have made. If they find themselves unable to agree on this apportionment, the Tribunal will give further consideration to the matter.

H0156 - 0002

The Tribunal desires also to point out to counsel -- both for the prosecution and for the defendants -- that it will materially help the Tribunal if counsel would submit translations of their speeches at the time they make them.

That is all.

DR. NELTE: (Counsel for defendant Keitel). Mr. President, the decision which you have just announced to us has surprised the defense, since they have not been previously heard with reference to this question. This appears to us to be all the more regrettable since the decision is, in practice, against the most elementary rights of the defense because it impedes the possibilities for us to state in court what, in this most important trial, is of importance to the defendants and the problem with which they are confronted.

At this moment we are not yet in any position to survey the entire material. If I were to state, without taking into account the other defendant counsel, the case of the defendant Keitel as an example, then you will probabl understand that the material alone which has appeared after the cross-examination puts me in an extremely difficult position. I am sure that applies to a large number of the other defendants' counsel as well.

In my opinion, these matters cannot be dealt with collectively. Considering all attempts to see these things collectively and typically, they must, nevertheless, be adjusted to the case of the individual defendants.

Fourteen days is a length of time which is very very short, it appears to me. In practice, it is almost impossible to achieve it so that an apportioning in a manner just to the indicidual defendants could be carried out.

Might I suggest, therefore, that the decision which you have just announced -- I am not sure whether it was only a suggestion -- should once again be reviewed, with consultation of the defense. Without wanting to speak before the reasonable statement which the entire defense is trying to make, I wish, nevertheless, now, to formally raise objection to the decision limiting the rights of the defense, a limit which exceeds the measure of what is bearable to us.

H0156 - 0003

H0156 - 0004

THE PRESIDENT: Do counsel either for the prosecution or the defense wish to make any other observations to the Tribunal upon this subject?

MR. DODD: Mr. President, I would like to state that I take exception to Dr. Nelte's argument, that it is a violation of an elementary right of these defendants, because in our country I think I am quite right in saying that it is quite common practice for our courts to restrict counsel in the matter of final argument, even when --

THE PRESIDENT: I am sorry, Mr. Dodd, but I am afraid there are three voices, English, French and Russian coming on the wire, on the Russian channel.

(The proceedings suspended temporarily).

THE PRESIDENT: Mr. Dodd, the interpreter thinks it is all right now.

MR. DODD: What I wish to say very briefly is that with respect to Dr. Nelte's argument that a restriction i time with respect to the final argument is a violation of afundamental right of these defendants, I wanted to call to the Tribunal's attention that in our country it is, I would say, rather common practice for our courts to restrict counsel in time in final argument, even in jury cases where there is much more need for argument, as the Tribunal has pointed out.

THE PRESIDENT: Does any other counsel wish to make any other observations?

DR. von LEUDINGHAUSEN (Counsel for the defendant von Neurath): Mr. President, to begin with, I should like to make some remarks regarding the limit imposed upon our time. If we are limited to 14 days, then that means approximately four hours per defendant for our arguments. But, then, in reality, these four hours are not four full hours, since, because of the technical arrangement which has become necessary for this court room, we are forced to speak much more slowly than we would speak during a direct argument or a direct, free discussion. That is to say, of the four hours which remain to us on the average, we must deduct again that time which we lose through having to speak so slowly.

In my opinion, taking four hours would, in reality, and definitely speaking amount to only three hours.

Mr. President, I believe that if you base your considerations on the assumption that in three hours we can deliver our arguments, you are making a

miscalculation, and I believe that we are right in saying that during these three hours we cannot possibly produce all the material which is available for every defendant and consider it in such a manner that the case is indeed fulfilling that purpose which it is intended to fulfil.

Before this military Tribunal, which, up to now, is quite unique, it seems to be the most important thing to find the truth; but finding the truth not only means the individual's abruptly chosen action. It also means that first of all it must be shown how it happened that that individual's action came about.

Furthermore, in that respect, particularly in my capacity as defense counsel for the defendant von Neurath, who was the responsible leader of the foreign policy for the Reich until 1938, I want to point out to you that the entire accusations which are alleged against my client are largely and unavoidably due to the circumstances as they developed. In this development of historical matters you will find the explanation for all the actions taken up to the day when my client offered his resignation.

All that I can do is to make that clear to you. I do not subscribe to the individual case of development. Gentlemen, if you take into consideration that in addition to that, I am still dealing with the subject of the activities of my client as a Reich protector, which alone is not altogether as simple as it might appear, you will no doubt grant me that I cannot possibly do that in a period which is tantamount to only three hours.

I want to say to the statement of the American prosecutor, that we are not before an American court here. I have just attempted to make enquiries about this. There is no information to the effect that in international tribunals, such as, for instance, the Tribunal of the Hague or the courts in Egypt, there has ever been a limitation imposed upon the duration of the speeches of the defense during the presentation of their cases. That is why I beg you to take into consideration that we are not before an American court here, but that this is an international tribunal, and that in this international tribunal, which, after all, goes far beyond the existing arrangements previously made and which goes far beyond the framework of any military tribunal which has up to now dealt with small particles of

H0156 - 0005

H0156 - 0006

that tremendous complexity of Germany, never has there been a limitation imposed upon the defense for the stating of their cases.

Gentlemen, if you take that into consideration, then I hope that you will allow me to ask you once more to reconsider your decision and not have us give the impression that we are neglecting our duty of presenting our case for our clients by not submitting them in full.

GENERAL RUDENKO: Gentlemen of the Tribunal, I will only add very little to what my colleague Mr. Dodd has already said. The penal code of our country admits the right of the Tribunal to impose limitations upon both the prosecution and the defense in their final plea.

I believe that the argument of the defense, to the effect that this decision of the Tribunal is putting limits on their rights and is unjust, is unfounded. The defense is already submitting evidence now in its case, and has every opportunity to give a complete presentation. I believe that there is no question of justice in limiting this trial.

I therefore uphold the argument of Mr. Dodd, and consider the decision of the Tribunal quite just.

DR. KUBUSCHOK (Counsel for defendant von Papen): Mr. President, will you please permit me to make one brief statement? No legal procedure can be anticipated in the beginning without taking time. That cannot be done at any stage of the trial.

You cannot allocate time at the beginning; and at the beginning, therefore, you cannot limit the time which the taking of evidence will require. Furthermore, as far as the following stages and the length of the statements presented by the defense are concerned, they cannot be forecast, either, and therefore not limited.

The value of the defense -- and, after all, that is the only reason why a defense is included in this proceeding at all -- is that one man who has that professional task and who has at his disposal the corresponding qualities must put before the Tribunal the material that he has found worthy of presentation, from long hours of work and in intimate conversations with his client.

That must, indeed, be done through such an intermediary; and just how far he will have to state his case is something that he as an expert must be able to decide. No man who participates in the proceeding, be he of the

H0156 - 0007

Tribunal or be he of the defendants' counsel, can approximately forecast the things that might become necessary and might be essential in this connection.

That is why I believe that there should be no fixed dates given, in the case for the prosecution, or during the collection of evidence, or during the case for the defense, for the end of the cases.

During the other stages of this trial, we have had to expect several difficulties. However, only the point of view expressed by the President can be the deciding factor for limiting the proceedings; and he, while directing the proceedings during the case for the prosecution, again and again confined the proceedings to the necessary amount of statements. I cannot understand why a similar procedure should not be suitable during our case.

I believe that due to that obvious discipline which every pleading counsel would apply to himself, a suitable limitation on the length of our presentations would occur in any case. But I honestly believe that no one with theexception of a participant, and he only at the end of the entire collection of evidence, can anticipate how much time willbe required. It is obvious, therefore, that any limitations imposed on the length of time now should be very carefully considered. If the statement made by the participant this morning is to the effect that our cases should be cut down -- and in this connection we are particularly grateful for the hint regarding the statements referring to the evidence -- then we shall most certainly come to a conclusion without this definite limitation, with respect to the suggestion made by the Tribunal, and limit ourselves as much as we possibly can.

H0156 - 0008

THE PRESIDENT: I don't propose to go fully or at all into the argument which led the Tribunal to making the announcement which I made this morning, but I think it would be desirable for Counsel for the defense, before they make any formal objection to that announcement, to study it. I do desire to say on behalf of the Tribunal that that announcement was not made without consultation both with counsel for the prosecution and counsel for the defense, and that was done in closed session. We heard both the counsel for the prosecution and counsel whom we understood to be representative counsel for the defense, and they made the suggestion which they thought right to us at that time and we fully considered it. We intimated to them that they should draw the attention of their brethren to what passed at that hearing in closed session. Therefore, it is entirely inaccurate to say, as Dr. Nelte did, that the announcement was made without hearing counsel for the defense.

I only desire to add to that that in the circumstances, the Tribunal will give further consideration to the matter. The suggestion made in the announcement was that the fourteen days, which the Tribunal thought sufficient for the speeches for the defendants, should be apportioned voluntarily among counsel. Those fourteen days are full days and will not be taken up at all by any argument upon the organizations, and until the defendants' counsel has attempted to make that apportionment, it must be obviously impossible for them to know whether they will be able to make their speeches, which are not speeches that are necessarily detailed examinations of the evidence, but are arguments drawing the attention of the Tribunal to the main points which they desire to draw the attention of the Tribunal to, it will not be possible for them to know whether they can make their speeches satisfactorily within the fourteen days. The counsel for the defense ought, therefore, to go into the matter together, as the Tribunal understood they were doing, and see whether they can satisfactorily present their speeches within that time. All the arguments which have been presented to us this morning were fully presented to us by counsel for the defense who appeared before us at the closed session, one of whom has addressed us this morning.

Now the Tribunal will go on with the hearing of the case.

DR. STEINBAUER: Dr. Steinbauer, counsel for the defendant Seyss-Inquart

H0156 - 0009

BY DR. STEINBAUER:

Q Mr. Witness, in answer to the last question put by the American prosecutor, you have stated that your letter had intended to represent a certain tendency, and I now want to ask you, what tendency was that?

A Sometime after the Anschluss there arose a certain amount of hostile activity against Dr. Seyss-Inquart and some other people. They came from dissatisfied elements, radicals in Austria and the Reich. They utilized Dr. Seyss-Inquart's hesitant attitude of the 11th of March, his tendency to the revolutionary line, and the maintaining of the principal points of the agreement between the two states, in order to accuse him of being a separatist.

Q Perhaps, Mr. Witness, you can be a little more brief.

A Right. These attacks seemed to be dangerous because Buerckel Heydrich was behind it. I considered the attacks to be unfair and I worded my report, therefore, to produce arguments and to put the evidence on such facts which would make it possible for the service to understand my argument.

Q So that, if I have understood you correctly, then you have mentioned that the merits of the party on one side protected Seyss-Inquart's person at the time?

A Yes. That is a good way of expressing it.

Q Now, my second question. In that letter you have mentioned that Seyss-Inquart had taken a letter of ultimatum to Schuschnigg. Have you any recollection to the effect that he had compiled that letter in his office, that he had prepared it?

A Dr. Steinbauer, you mean the letter of ultimatum of the 11th of March?

Q Yes, that is the one.

A I believe that that letter was written by the office and I participated in writing it.

Q Then you go on to say, in the letter put to you by

H0156 - 0010

the prosecutor, that through the collaboration of Dr. Jury amd Leopold, Seyss-Inquart had become a state councillor, and I want to ask you, did you mean that Dr. Jury and Leopold had a chance of having influence on Schuschnigg?

A No, and that can't be the meaning of it.

Q The prosecutor, to back his statement yesterday, submitted a second document to you. It was a speech which you hade made in Thuringia. Do you remember that?

A Yes.

Q Is that speech typical for such a speech in the country? I mean, from the point of view of the propaganda of Goebbels? Was it underlining your merits and making propaganda against the opponent?

A I wouldn't say that. It was a social get-together of the Old Guard on the occasion of the 11th of March, during which there was a certain amount of beer and there was music and I described events rather like a story teller. I spoke for a very long time; in fact, it was the longest speech I ever made. It took more than three hours. I was speaking quite freely by memory. I had no written material, and the record which is obviously available now appears to me not to tally with my statements in every point.

Q You mean, therefore, that there was an intention of producing an effect upon the members of the party rather than to write history?

A Yes, of course.

DR. STEINBAUER: Thank you very much. That is enough for me and I have no further questions.

DR. KUBUSCHOK: Dr. Kubuschok, counsel for von Papen

BY DR. KUBUSCHOK:

Q During the cross examination yesterday it was mentioned that on one occasion you had met vonPapen at Garmisch. What did you talk about to von Papen at the time and how did that conversation come about at all?

A Dr. Seyss-Inquart and I had been invited to Garmisch by the Reich Sports Leader. The German-Austrian-Alpine Club was to be disussed. Together with von Tschammer we were watching the bob-sled races at the lake there. We also met von Papen. Herr von Pape , Seyss-Inquart and I then

H0156 - 0011

walked back from there to Garmisch, and on that occasion the political situation was discussed and the --

THE PRESIDENT: You don't need to give the details of it. I suppose the poiht of the question is that the conversation was not political. Is that the point of the question?

DR. KUBUSCHOK: The conversation was political, but it is a question of the type of political conversation it was.

BY DR. KUBUSCHOK:

Q Perhaps, Witness, you can confine yourself to the facts. The reason that I know that, it was an accidental meeting. When you were coming back from the bob-sled race now, what were you talking about?

A We were talking about the situation in Austria. We talked about the state of affairs regarding the pacification and we talked about any individual point which might be exhaustively interesting during that meeting.

Q So that nothing was said which could not have been put before the Austrian public. Were these matters in keeping with the July contract?

A Yes, of course they were.

Q But then , once during the speech which has already been mentioned, you have pointed out that you had talked to others, on the evening of the 8th of March, 1939, in von Papen's apartment. I should like to know whether in this case we are concerned with a pre-arranged meeting or whether that was once more a more or less accidental meeting?

A The meeting was an accidental one, nor do I remember who might have arranged it. The conversation dealt, naturally, with matters in regard to Schuschnigg's plan for the plebescite, whichwas entirely new and most surprising, so that we had to think about it from every point of view and clarify it during debate.

Q What was von Papen's position during that conference?

A I remember that von Papen, who was only in Vienna accidentally on that evening, was acting in a reserved way. I think that he would have considered the outcome of the plebescite as perfectly possible.

H0156 - 0012

Q. For which reason did you think that yes was considered a possible and plausible answer by him ? Was it for practical reasons or was it due to the questions which the Asutrian Government had submitted ?

A. It was with reference to the questions which had been submitted.

Q. Once again, my question is : Did the matters which were discussed arise in any way in a subversive conference, or was it a more or less social gathering during which a political conversation cropped up due to the atmosphere fo the time ?

A. It was an accidental meeting; it was altogether improvised.

Q. Were any resolutions passed ?

A. No.

THE PRESIDENT: The witness can retire.

DR. STEINBAUER: With the permission of the Tribunal I shall now call the witness Dr. Guido Schmidt.

GUIDO SCHMIDT, a witness, took the stand andtestified as follows :

BY THE PRESIDENT :

Q. Will you state your full name.

A. Dr. Guido Schmidt.

Q. Will you repeat this oath after me :

I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(the Witness repeated the oath.)

THE PRESIDENT: You may sit down.

DIRECT EXAMINATION

BY DR. STEINBAUER:

Q. Witness, what positions did you hold in the Austrian Republic ?

A. I was a diplomat by profession under Dr. Seipel. I was taken into the Austrian Foreign Service and for about six years I was a member of the Austrian Legation in Paris. Then I was assigned to the head of the Austrian

State for negotiations with the diplomatic corps. In 1936, under Dr. Schuschnigg, I became State Secretary, and later Foreign Minister.

I belonged to the Schuschnigg Government until his forced resignation. From that time on, I had no political activity.

Q. Witness, what reasons in foreign politics and economics led to the agreement of the 11th of July 1936 ?

A. At the beginning of 1936, the foreign political situation of Austria had changed to Austria's disadvantage. After the events of 1934, England France and Italy prepared a three-power agreement concerning the maintenance of Austrian independence. Beyond the international obligations which are considered to have existed, the three powers now set up a new guarantee for the maintenance of Austria.

During the whole year of 1935, the protective function for Austria was pursued. The collapse of the Stresa front as a result of the Abyssinian undertaking of Mussolini, meant for Austria the loss of its only practical international guarantee, and for Chancellor Schuschnigg, the creation of a completely new situation . With this concept of foreign power, Austrian independence rested not only on the shoulders of Italy, but on other shoulders, such as those of England and France.

Then, there were difficulties resulting from the developments of the situation in Europe from March 1936 on, from the day on which Adolf Hitler, at the beginning of his surprise politics, occupied the Rhineland without encountering serious resistance from the western powers.

Therefore, the Austrian Government, of necessity, was concerned with the fear that some day in the Austrian question as well a surprise solution, or, as we later saw, a forced solution, might come.

These reasons have to be given if we ask about the considerations on which the agreement was based. Also the closer relation between Rome and Berlin, which began to be felt at this time, was traceable to the sanction policy of the League of Nations. Austria, lying between Italy and Germany, had to expect that one day the Austrian-Italian friendship which had existed since the time of Dollfuss, would fall victim to the closer relationship between Rome and Berlin.

H0156 - 0013

For this reason and for other considerations, Chancellor Schuschnigg sought a way to improve relations, to restore relations between Austria and the German Reich.

It would perhaps be useful in this connection to give a few principles on Austria's thoughts in regard to foreign policy. The basic thought was the maintenance of Austrian independence. Austrian foreign policy was furthermore based on the knowledge of the

H0156 - 0014

extremely difficult and ticklish geographical situation of this country between two totalitarian states, at the crossing point of ideologies of Europe. Therefore, it had to be the task of Austrian foreign policy to reach an understanding with her great neighbor, the German Reich. The foreign policy further had to be based on the determination to avoid everything that could lead to a conflict with the German Reich, to avoid everything that could antagonize the Reich, in order to prevent violent action which had to be feared after the 7th of March.

There were reasons in practical politics which were decisive in this determination: to maintain relations with the German Reich, relations which had been unnaturally interrupted. Aside from the reasons of foreign policy, there were also economic considerations. The world economic crisis, because of Austria's rather weak economic constitution, affected Austria very seriously.

This can be understood only if we look back to the beginnings of this young state. From the very beginning, all neighboring countries of Austria had carried on an economic policy of chauvinistic self-interest, and in no case had it been possible to reach very close cooperation of all Danube countries. There were individual combinations, such as the Rome Protocol, but the mutual distrust which all had brought from their former homes, and monarchy, continued to exist and obstructed such healthy development.

From 1931, the beginning of the world economic crisis, there were a number of attempts to relieve the situation. I will mention them briefly, and begin with the attempt of the government to create a customs union which failed because of the resistance of the League of Nations. In 1932, there was an attempt by France to bring Austria and Hungary into the Little Entente and to reach economic cooperation there. Germany and Italy opposed this. England was also against it.

In 1933, the economic emergency was affected by the internal struggle against National Socialism. This also had its effect on the economic life in Austria, because the economy was also used as a battle theme in the internal struggle.

H0156 – 0015

THE PRESIDENT: This is undoubtedly interesting, but it has rather a remote bearing, perhaps, upon the questions which the Tribunal has to decide. I don't know whether the witness has dealt with it sufficiently for your purposes.

DR. STEINBAUER: Mr. President, in this presentation of the facts I wanted to show that from the economic and foreign political point of view the situation was such that the role of the defendant was forced into the background, but we can continue with the question.

BY DR. STEINBAUER:

Q. Witness, will you speak quite briefly.

A. The conclusion?

Q. Yes.

A. The economic relations with the German Reich were broken off, and Austria's struggle for economic existence was put on a very shaky basis. Because of these considerations, and for economic reasons, too, Chancellor Schuschnigg attempted to reach an agreement with the German Reich and to restore economic relations which had been completely broken off, to remove the "1,000 mark blockage", to restore foreign traffic, the flow of economic goods, to silence the complaints which were coming from the provinces in Austria because of the lack of market for agricultural products, grain, cattle and so forth.

Q. Witness, I ask you now: Did Dr. Seyss-Inquart work on preparing or concluding this agreement of July 1936?

A. No. The Chancellor worked with Glaise Horstenau.

THE PRESIDENT: There is a defect in the sound equipment, so we had better adjourn.

(A recess was taken).

H0156 – 0016

H0156 - 0017

BY DR. STEINBAUER:

Q Witness, in the spring of 1937 Seyss-Inquart entered politics, and presumably you met him.

A Yes, I met him in the summer of 1937.

Q Now, I shall go on, and I should like to ask you what reasons in domestic and foreign policy led to the well known meeting of Adolf Hitler and Dr. Schuschnigg in Berchtesgaden.

A This question demands a detailed answer. I ask for permission to be able to express myself in somewhat more detail.

About New Years, 1937-1938, the Austrian foreign political situation had become worse. Italy had entered a foreign engagement in Spain in favor of France which reduced its weight in central Europe. What we called "The Watch at the Brenner" had, in effect, ceased to exist, and Germany had more or less a free hand toward Austria.

THE PRESIDENT: Dr. Steinbauer, the Tribunal has common knowledge of the history of this time. It is not necessary, really to go into it.

BY DR. STEINBAUER:

Q Witness, I should like to ask you to tell me if you were present at Obersalzberg at that time.

A Yes. I should like to add, if I am to pass over the historical events, that is how I had to understand the question. The Chancellor accepted the invitation in order to prevent Austria's being reproached for having refused a peaceful attempt to clear up existing differences between Austria and the German Reich. The Chancellor was by no means optimistic for the reason that the existing differences of opinion were very great and also because of the personality of his associate in the talks. I recall that Schuschnigg before leaving for this meeting told me that he was of the opinion that it might have been better to send Professor Wagner Jaureck, the greatest psychiatrist of Vienna, in his place, but he believed, in view of the exposed position of Austria, that he had to accept in order to gain time until the international situation should improve in Austria's favor and in order to avoid violent action.

Unfortunately, we were right. The fear of a coming attack or of

H0156 -0018

coming difficulties was justified. We were justified in the fear that Austria would be left entirely alone. The realization of the fact that we were completely deserted was one of the primary reasons, together with considerations of bridging over this difficult period and gaining time. Austria had to take this difficult way in the dark time which was coming in the end of the winter of 1937-1938 in Berchtesgaden until March 1938 without the light of any immediate or prospective assistance. That is how Berchtesgaden came about.

H0156 - 0019

Q As Foreign Minister, did you inform the big powers of the events at Berchtesgaden?

A Yes. Contrary to press reports, the interested big powers were informed in detail both before and after Berchtesgaden I gave all the formal material to the head of the political section to whom the diplomatic corps applied first. The Chancellor himself and I gave detailed reports to the accredited foreign representatives in Vienna.

THE PRESIDENT: Forgive my interrupting you, but we do not want the details. You said you informed the foreign powers beforehand and afterwards. That is sufficient.

BY DR. STEINBAUER:

Q Now we return to the defendant. Did Dr. Seyss-Inquart take part in these talks in Berchtesgaden?

A No.

Q He became Minister of the Interior and Police Minister, and he went to Adolf Hitler in Berlin. Did he report the contents of his first talk with Adolf Hitler to Schuschnigg?

A I do not know, but I do know of individual statements by State Secretary Zernatto, the head of the Fatherland Front, from which I can conclude that a conversation between Minister Zernatto and Seyss-Inquart must have taken place.

Q It can therefore be assumed that through Zernatto Schuschnigg also learned of it?

A Yes, I assume so.

Q Now we will go on again to March. Schuschnigg planned a plebiscite. Do you know whether Schuschnigg informed Seyss-Inquart of this or discussed it with him?

A Yes, Seyss-Inquart was informed of it. I learned that about the 10th of March an agreement between Seyss-Inquart and the Chancellor was reached. The Chancellor told me that Seyss-Inquart had declared himself willing to speak on the radio in favor of the election.

Q When Glaise Horstenau reported that there was a threat

H0156 - 0020

of invasion, did you in your capacity as Foreign Minister, inform the foreign powers of this?

A A direct report from Glaise Horstenau I did not receive. I learned of the critical situation only from the ultimatum which demanded a plebiscite on the resignation of the Chancellor---13 March. From then on, there was constant contact with the diplomatic corps in Vienna and later, in the following hours, with all foreign representatives.

Q Then, the demands of the German Reich followed close upon one another. In particular, the demand was made that Schuschnigg should resign. The ministers were assembled, and a member of the government is said to have told Seyss-Inquart the following:

"We now see clearly that the Reich is putting an end to dealings with Austria. It would be best for Seyss-Inquart to take over the office of Chancellor so that the transition can be at least bearable."

Do you remember such a statement?

A No. Only later did I hear of this statement by Minister Glaise Horstenau which contained this request to Seyss-Inquart.

Q Did you have the impression that with the farewell speech of Schuschnigg the Fatherland Front, which was directed by him, also had collapsed?

A I believe that the question does not quite fit the situation. The resignation of the Chancellor was demanded by ultimatum, so that the existence of the Fatherland Front had also fallen away. With the entry of the German troops, National Socialism had become a reality. Developments showed that it did not leave the Fatherland Front any life.

Q Seyss-Inquart was then appointed Chancellor, set up his cabinet, and you, witness, were proposed as Foreign Minister; is that correct?

H0156 - 0021

A That is correct, I refused. I was requested again and I refused again, and then the reason was asked. Then Seyss told me that he intended, as long as possible, to keep Austria independent, but he was afraid that with his government, with the National Socialist majority, he would encounter difficulties in the West. Therefore, he wanted to have my diplomatic experience and connections retained for the government.

He added that he intended, by calling in positive Austrian representatives, to form a broader platform for this government.

Q Did you know the names of such positive Austrians? Did you find any such names in the list?

A There were such names. I have wondered about it myself, but I cannot give any individual names with certainty.

Q Do you know why another list of ministers was drawn up, which was the final list?

A In the evening State Secretary Keppler arrived from Berlin, and, as I later learned, he rejected me, and others too, I believe. I think I can remember one name. I believe that he suggested, on behalf of Berlin, that Weber should take over the foreign ministry. Thus, this list was discarded and Seyss no longer tried to dissuade me from my negative position.

Q Do you believe that Seyss-Inquart had the intention to keep Austria independent, although under National Socialist leadership?

A As a witness, I can only say what I know. Opinions are very difficult to express. I have stated what he told me.

DR. STEINBAUER: I have no further questions to put to this witness.

BY DR. KUBUSCHOK (counsel for defendant von Papen):

Q According to a statement by the former American Ambassador in Vienna at that time, Mr. Messersmith, Mr. von Papen, at the beginning of his activity in Vienna, is said to have stated that his real task in Vienna was the economic and political incorporation of Southeastern Europe in Germany, that Southeastern Europe was the natural hinterland of Germany.

Did you, witness, ever learn of such a statement?

A No. In view of the close contact which I had with Minister Messersmith before my appointment as a member of the government, and especially

H0156 - 0022

later, I would probably have learned of it. I assume, however, that this question had no special significance, or was not given any special significance at the time, because in first visits between diplomats, as a rule, they usually make a tour de raison of questions which interest both countries, that is, general political questions; nor did I note later that Southeastern Europe's policy was being carried on from the German Legation.

Q According to Mr. Messersmith, Mr. von Papen is supposed to have said at that time that he was working to weaken and undermine the Austrian Government. Do you believe that Mr. von Papen made such a statement, and, particularly, did he carry on such a policy?

THE PRESIDENT: Dr. Kubuschok, you can't ask him whether he believes that a certain statement was made or not. That is pure speculation; it is not the subject of evidence. Therefore, that question must be withdrawn, and no answer given to it, and it will be struck out.

DR. KUBUSCHOK: Yes.

BY DR. KUBUSCHOK:

Q I will now ask the witness this: Did the witness Messersmith report such a statement by Mr. von Papen to you?

A No.

Q Did the Austrian Government consider it advisable and necessary to strengthen relations with

the Reich by an agreement in July of 1936?

A Yes. I have already explained the reasons of practical politics, which were of a foreign political and economic nature.

Q In this and in later negotiations, did internal political reasons, particularly the settlement of the Party question, have a part in deciding this?

A Of course, it was the task of the government to solve inner political tension. The Chancellor had to try to find a way out of the difficulty, which he had inherited from Dollfuss, bu cutting down the inner political front.

Q Do you believe that Mr. von Papen concluded the July 1936 treaty with treacherous intent?

A No, I have no reason to believe that he did not consider this agreement a serious attampt to create a modus vivendi between Austria and the Reich. That is not changed by the fact that it resulted in a modus mali vivendi.

Q Did the Germans complain that after the agreement of the 11th of July, 1936, there was no essential change in the inner political course of the Austrian Government?

A Such objections occurred repeatedly, and thus we come to the last and the real cause of the conflict with the Reich, the battle of National Socialism within the country. In the interest of maintaining the independence of the country and cooperation--on the basis of the treaty of the 11th of July--with the German Reich, the leaders of which were National Socialists, there were two fields or two demands which, in the long run, the Austrian Government found to be irreconcilable.

These were the difficulties of the task of all persons entrusted with carrying out this treaty in Vienna, including the German Minister.

H0156 - 0023

Q. On the basis of these conditions, particularly the July agreement, were questions of internal policy, such as technical and personnel questions of the so-called national opposition, the subject of discussions between the chancellor and Mr. von Papen?

A. The situation as just described shows that such discussions were unavoidable, and that between the chancellor and the German minister, as well as with the Italian minister, talks on the internal political situation took place. This is, from a general point of view, quite customary. I know of no diplomatic records which do not contain such entries. The chancellor could not have permitted any intervention, in any case.

In personnel questions, Schuschnigg was especially reluctant, because he was afrain of "Trojan horses", I might say. That more or less represents the situation in wuch talks between the chancellor and the Germans on the other side.

Q. Was the opposition of Mr. von Papen to the methods of the illegal party clear?

A. Yes. According to the information received by the government, the heads of the illegal party -- that is, Leopold, in particular -- were rejected by von Papen. This was doubtless due to differing political ideas and differing political methods which von Papen on the one hand and the heads of the illegal party on the other hand were determined to pursue.

Q. Did Mr. von Papen, referring to the July agreement, ever take an aggressive attitude in Austrian foreign policy?

A. There existed between Austria and the Reich, not only in cultural and internal political fields, but also in the foreign politicalfield, unbridgeable differences of opinion. I will mention briefly the demands of the Reich. Austria was to leave the League of Nations, which we, referring to the geographical and historical continental position of Austria, rejected. A second point was the Austrians' attitude --

THE PRESIDENT: (Interposing). Is this at all answering the question that you have put to him?

DR. KUBUSCHOK: He is introducing the answer to the question.

H0156-0024

H0156 - 0025

THE PRESIDENT: Try and get on with the answer to it, will you? Get the witness on to the answer, rather than the introduction.

BY DR. KUBUSCHOK:

Q. I should like to know whether Mr. von Papen had an opportunity for an agressive intervention in Austrian foreign politics, and in the individual cases mentioned by you, whether he took advantage of this opportunity.

A. I want to say that in spite of the deep, basic differences, this did not occur, and that a minister with a more radical point of view would certainly have had an opportunity and occasion for a sharper attitude towards Austria. Not in a single case did we reach an agreement with the German Reich on a joint foreign political action. Von Papen did remind us of that, but that was all. As for aggression, or aggressive activities, I cannot speak in this field.

Q. Did Mr. von Papen in part act as an especially active mediator? I would like to remind you of the case of Pinkafeld.

A. The Pinkafeld incident is an example of the mediating activity which von Papen carried out. On the surface, it was a minor incident, but it led to threats of invasion by Hitler. Von Papen was called to Berlin, and had a great deal of difficulty in persuading Hitler --

THE PRESIDENT: (Interposing). Witness, if it is convenient to you, it would be more convenient to the Tribunal if you spoke a little faster.

BY DR. KUBUSCHOK:

Q. Then the case was cleared up by von Papen without any difficulty?

A. Yes.

Q. Did Mr. von Papen speak to you about the reasons for his being called

H0156 - 0026

away on the 4th of February, 1938?

A In a visit early on the 5th, he expressed his astonishment, and his anger, I might say, at his being called away, which in his opinion and also in our opinion had been determined by the events of the 4th of February, 1938, the recall of Fritsche and other generals, and the recall of von Neurath. In his opinion, it would not remain without effect for Austria, either, especially in view of the person of his successor, who was given. At that time, Buerckel or Counsul General Kriebel was proposed.

That was approximately what von Papen said to me on the 5th, and I believe also the chancellor before he left.

Q Then he believed and feared that his successor would carry on a more severe policy against Austria?

A From the two persons who had been mentioned, that conclusion was inevitable.

Q Did von Papen take part in the pressure exerted on you and Schuschnigg in the Berchtesgaden talks?

A No, he did not.

Q Did he rather, as far as he had any opportunity to take part in the negotiations, attempt to weaken Hitler's demands?

A In view of the athosphere of violence which prevailed and the program of demands which was presented, this was not difficult. I believe that he, like many others, endeavored to keep order so as to assure sensible progress of the negotiations.

Q In the course of the negotiations, a number of concessions was made. Do you believe that the attitude and the participation of von Papen as a whole in these negotiations had a restraining effect and led to this practical success for you?

A His attitude as a whole was no doubt mediatory. One cannot speak of success at Berchtesgaden as far as the result is concerned; but that is not von Papen's fault.

THE PRESIDENT: Dr. Kubuschok, do you think you will be able to finish in a few moments?

DR. KUBUSCHOK: Yes.

H0156 - 0027

BY DR. KUBUSCHOK:

Q I believe it would be better to answer my question, if you did not consider the final result of Berchtesgaden, but rather the fact that Hitler had a great program of demanding beyond the final results, whether you consider that some very important points were changed in the course of the negotiations.

A As far as there was any aid on the other side, it came from von Papen.

Q Do you recall that the Hitler-Schuschnigg negotiations were especially violent because Hitler determined Schuschnigg in his German attitude and that von Papen came to Schuschnigg's aid, and that that improved the original situation for Schuschnigg?

A I was not present for the first hour or two of the talk. I cannot answer the question.

Q My last question is this. Did Mr. von Papen, after the 26th of February, the day on which he took leave of the Federal President, have any official activity in Vienna?

A No; the Vienna legation was administered by the charge d'affaires, von Stein, who considered the two protests against the demand plebiscites on the afternoon of the 9th or the morning of the 10th. Von Stein, General Muff, and State Secretary Keppler sent in the ultimatum for getting the resignation of Chancellor Schuschnigg to the Austrian President. This shows that Ambassador von Papen was no longer acting.

THE PRESIDENT: Very well. We shall recess until a quarter past two.

(A recess was taken until 1420 hours.)

File Price

H0156 - 0028

AFTERNOON SESSION

(The hearing reconvened at 1415 hours, 13 June 1946)

THE PRESIDENT: The Tribunal will not sit on Saturday.

DR. KUBUSCHOK: May I have permission to put one more question to Witness Schmidt, a question which I had overlooked putting before the recess?

THE PRESIDENT: Yes.

GUIDO SCHMIDT -- Resumed

DIRECT EXAMINATION -- Continued

BY DR. KUBUSCHOK:

Q. Mr. Witness, in November, 1937, in the course of measures introduced against the illegal movements, certain materials were confiscated which were given the name "Tafs papers". Is the presence of Herr von Papen referred to in these "Tafs papers" ?

A. As far as I can recollect, with this material which we called the "Tafs plan" a number of documents were discovered one after the other. I think I can remember that in one of these documents Papen was mentioned. An attempt on the life of the German Ambassador to Vienna was to be the cause for interior uprisings in Austria, which were to be followed by reprisal measures by the government; and then later it was to lead to measures introduced by the German Reich. I can not remember the details of that plan any more.

DR. KUBUSCHOK: Thank you.

DR. VON LUEDINGHAUSEN: Dr. von Luedinghausen, counsel for the defendant von Neurath. With permission of the Tribunal, I should now like to put a few questions to this witness.

BY DR. VON LUEDINGHAUSEN:

Q. Dr. Schmidt, when and on what occasion have you met Herr von Neurath ?

A. I met von Neurath in November, 1937, in Berlin where I paid a visit to him.

Q. Can you tell us what attitude von Neurath, as German Foreign Minister had with regard to the relations of the German Reich to Austria ? In particular, can you tell us his views regarding the agreement of the 25th of July 1936 ? I should like to draw your attention to the fact, in this connection, that the prosecution have alleged that von Neurath had made this agreement

Price
H0156 - 0029

wilfully deceiving.

A. During the few meetings which I had with von Neurath he has always expressed the view that he was in favor of an independent Asutria. He mentioned that there should be the closest possible cooperation in the foreign politicalm economical and military sectors. Our conversations always stood on the basis created by the 11th of July agreement, and differences of opinion only arose through the various interpretations of the agreement. Neurath, on behalf of the German government, was interested in the best possible activation of the agreement, which, for defensive reasons, we preferred a different interpretation. At any rate, Neurath refused forcible methods and he followed approximately the line of an independent Austria but working closely with Germany.

Q. What was Neurath's opinion regarding the extreme circles of the party in the Reich which, in fact, favored a policy of intervention in Austrian affairs ?

A. As I have already said, methods of force were disliked by Neurath which includes the methods of intervention and the methods of the illegal party in Austria. I believe that, from conversations which I have had with him, I can state that as a certain fact. His complete refusal of the activities and the appearance of Keppler and Weselmeier speak in favor of the same point of view, they having been the preparers of the new development in Austria. The expression which he has used in that connection allow no doubt regarding his point of view.

DR. VON LUEDINGHAUSEN: Mr. President, I have no further questions to put to this witness.

DR. SEIDL: Dr. Seidl, counsel for Frank and Hess. Mr. President, may I have permission to represent my colleague, Dr. Stahmer, who is absent and put a few questions on behalf of Defendant Goering to the witness ?

THE PRESIDENT: Yes.

BY DR. SEIDL:

Q. Mr. Witness, you have just stated that in November, 1937, you paid an official visit to Berlin ?

A. Yes.

Q. Did you, on that occasion, talk to the then Field Marshal Goering ?

A. Yes.

H0156 - 0030

Q. Is it correct that even at that time Field Marshal Goering had already told you that the Austrian problem could only be solved by complete union between the two brother peoples ? That is to say, Austria's Anschluss to the Reich. And that he, in turn, would do everything he could to achieve that end ?

A. It wasn't told me in those words. The Reich Marshal did refer to a close cooperation with Austria, but a demand for an Anschluss was not mentioned as far as I can remember. I could add, to illustrate that, that at that time the events of the 25th of July, 1934 were being discussed. I expressed the view that the agreement of July, '36, would put a final line under that development, and Reich Marshal Goering stated that he, mentioning Habicht, would make the originating of this affair -- make them responsible and that he would ban them into some other part of Germany. That remark alone shows that the Anschluss was not mentioned. The Reich Marshal appreciated the development caused by the 11th of July, 1936. That is to say that a full stop had been put at the end of the developments, ending then what one had to describe as a state of war. That was the state of affairs existing to the 11th of July, 1936.

Q. Is it correct that on the morning of the Anschluss, that is to say the morning of the 12th of March, 1938, Goering called you to Berlin, telling you to use an airplane ?

A. No. That was either Monday or Tuesday; that is the 15th or 16th.

Q. When you were in Berlin, did he put the question to you whether you yourself or Schuschnigg had asked for help from foreign powers, military help ?

A. I can not remember having heard that question.

Q. You stated this morning that with the Anschluss National Socialism in Austria had become reality. I now ask you, before the Anschluss, wasn't National Socialism a political reality in Austria ?

A. Yes, certainly a political reality, but I am talking of a political reality in the sense of the final force.

THE PRESIDENT: I am afraid you are going a little bit too fast -- well I don't know what it was. Anyhow, you had better repeat it because the interpreters don't seem to have got it.

H0156 - 0031

BY DR. SEIDL:

Q The question was whether, even before the Anschluss, National Socialism in Austria had been a reality, and I put this question with reference to the fact that the witness had said this morning that only with the arrival of German troops had Austria found National Socialism a reality.

A By "Political reality" I meant that now National Socialkism had got hold of the authority of the state, because until then it had been a prohibited party, which of course, after the agreement of February 12, was allowed within the Fatherland Front and had been asked to cooperate in the political life.

In other words, I wanted to say that was the principal change, due to the arrival of German troops, which came to the National Socialists.

Q Now, one last question: After the Anschluss, did you not repeatedly tell the Reichsmarshall that the Fatherland Front, on the occasion of the Anschluss, had collapsed like a house of cards?

A Well, of course I cannot remember individual statements, but the collapse of the Fatherland Front did, of course, happen when the Chancellor resigned. The Fatherland Front was the collecting point for resistance , and with the 11th of March, resistance had collapsed.

DR. SEIDL: I have no further questions.

THE PRESIDENT: Does the Prosecution want to cross examine?

CROSS EXAMINATION

BY MR. DODD:

Q Dr. Schmidt, when, for the first time -- if you know-- did the defendant von Papen suggest to Chancellor Schuschnigg that he, Schusnigg, have a meeting with Hitler?

A Late in autumn 1937, possibly November; it may have been December, von Papen made the suggestion for such a meeting. These meetings did not, however, have any concrete results. The official in vitation was brought by von Papen on or about the 6th or 7th of February, after he had returned from his visit to Hitler. On that day I heard of that invitation.

Q Now, will you tell us also, if you know, whether or not von Papen assured Schusnigg that this meeting would be restricted to very well defined lines, and that it would concern itself only with matters that were agreed between Schusnigg and von Papen before the conference took place.

H0156 - 0032

A The Chancellor himself demanded exact wording for the agenda of the conference, that is, "11th July, Final Removal of Existing Differences" and so on and so forth. That had been agreed between von Papen and Schusnigg.

Q And did von Papen assure Schusnigg that the meeting would be entirely favorable for Austria?

A Assure him? No. But a declaration was given by von Papen to the effect that the situation at the time was favorable. In this connection, von Papen referred to the conditions such a s had been created on February 4.

Q Well --

A He believed then that Hitler would lead a foreign political success, following these events, and that for a very cheap price, therefore, a certain success could be scored by the Chancellor.

Q Of course, what I am trying to clear up her--and you can answer briefly, which, I think, will help us--is this: You and Schusnigg had the impression that advantage would accrue to you and to Austria if you attended this meeting, isn't that so?

A I said earlier that the Chancellor was not optimistic. An improvement on the situation, therefore, was hardly expected, but removal of the existing differences.

Q Now, the night before you left for Berchtesgaden, you had a conversation with a man by the name of Hornbastel, is that so? The ambassador.

A Yes.

Q And had you already had a conversation with Seyss-Inquart that same evening, you and Schusnigg?

A It is ppssible. During those days, repeated discussions took place.

Q Well, maybe I can help you a little bit. Don't you recall that Zernatto and SEyss-Inquart were drawing up a memorandum of some sort about domestic questions while you and Hornbastel, I believe, or someone else, were preparing a paper or papers on international matters or matters of foreign policy? Does that help you any?

A I'm afraid I haven't understood you.

Q Well, I am referring to the time when you and some of your associates were prepparing a memorandum of some sort about the foreign questions, and Sernatto and Seyss-Inquart were preparing

H0156-0033

papers about domestic affairs. You remember that, don't you?

A Yes.

Q Now, you were alarmed that night about Seyss-Inquart, weren't you?

A Yes.

Q And why were alarmed? What was the cause of your alarm? What did you fear at the hands of Seyss-Inquart?

A The drafts which we saw before the departure, which had been used by Zernatto and Seyss-Inquart as the basis for some of the political discussions, appeared to me to be politically useless It was my impression that two men were working here who had the wil to talk but who didn't do justice to the seriousness of the situation. There were descriptions used, such as the Austrian National Socialist conception opposed to National Socialism, but there is no difference. An Austrian National Socialist conception can only be National Socialist. I criticized these matters during our conference.

Q Will you agree that he was in some kind of combination with Hitler and that bad things would result from it for Austria?

By "him" I mean Seyss-Inquart.

A No, at that time I had no fear that there was a secret agreement between Hitler and Seyss-Inquart.

Q Now, when you got to Berchtesgaden the next day, you found that much of the material that had been discussed between Zernatto and yourself and Seyss-Inquart and Schuschnigg was the basis for Hitler's demands on Schuschnigg, isn't that so?

A Yes.

Q And weren't you convinced, at least that day, that Seyss-Inquart had been in communication with Hitler some time before you got to Berchtesgaden and had communicated to him these basic demands?

A We merely had the impression that the basis for this conference was a draft which had been prepared by men who knew the conditions, so that a considerable part of Seyss-Inquart's agree-

H0156 - 0034

ment was based on this program of demands. The entire program of demands had not been made known to us previously.

Q You and Schuschnigg represented Austria that day at Berchtesgaden?

A Yes.

Q Hitler, von Papen, von Ribbentrop, Keitel, Sperrle, and Reichenau were there for Germany, isn't that so?

A Yes.

Q You and von Papen and Schuschnigg rode from the border together in the same railroad coach to Berchtesgaden, did you?

A Yes.

Q And in the course of that --

A (Interposing): Whether Papen was in the same coach, that I am not sure of, but he was in the same carriage on the way back.

Q Well, he was on the train, wasn't he, whether he was in the same coach or not? Didn't he get on the train at the border and ride on with you and Schuschnigg?

A That I no longer know.

Q Didn't he meet you at the border?

A He was waiting for us at the border, yes.

Q Perhaps I am confused, but what I am getting at is a particular conversation that you and Schuschnigg had with von Papen either right at the time you met him at the border, or in the course of your trip up to Berchtesgaden, when he told you, "Oh, by the way, there are going to be a few generals up here. I hope you won't mind." Do you remember von Papen saying that?

A Well, generals were mentioned, yes. Whether the name Keitel was mentioned, that I can no longer remember, but it was said that he would be there.

Q Well, it was rather casually said, and you didn't have any opportunity to object at all, did you? And up to that time you hadn't known there were to be military men there.

A No, at that time we didn't know.

H0156-0035

Q Now, you got to Berchtesgaden at what time of day? Early in the morning or mid-morning?

A In the course of the morning.

H0156 - 0036

Q Yes, and I wish you would tell the Tribunal, as well as you can, just what happened there that day. We have heard much testimony about this meeting, and you are the first person on the stand who was there. I guess that's not so -- Keitel was there also. But at any rate, you participated in the discussion. How did the discussion start?

A To begin with, the discussion started with a conversation between Hitler and Schuschnigg. That conversation took place alone, so that neither I or the other gentlemen were present. Later, the individual gentlemen were consulted, and then there were conferences between Hitler and the then Foreign Minister Ribbentrop, during which the program points which had been pointed out before were discussed. In the course of the conversation, individual demands were . . .

Q While Hitler and Schuschnigg were talking, who were you talking with if you were talking with anybody, or whatwere you doing?

A I was together with the other gentlemen whom you have already mentioned, partly in the large hall and partly we sat in the ante-room right outside of the conference room.

Q Did you talk to von Ribbentrop, for example, while Schuschnigg was talking to Hitler? What was going on there? What were you discussing with Ribbentrop, if you were talking to him?

A In the afternoon we discussed with Ribbentrop the program of demands. I did that partly on my own, and I succeeded in having certain points eliminated

Q For the moment I wish you would limit yourself to time here so that we will know the exact sequence of events as they happened. While Hitler and Schuschnigg were in conference, were you just sitting around in an informal conversation or were you in an actual conference with Ribbentrop or with anyone else?

A Not in the morning, no, because I, at least, had not yet seen the program. The political discussion could only take place on the strength of the individual demands which were to be put.

Q There were recesses, so to speak, between the conferences, and during those recesses, didn't you have an opportunity to talk to Schuschnigg? During those few intervals?

A Yes, after about an hour Schuschnigg came out and told me about the situation.

H0156 - 0037

Q Tell us what he told you, right there.

A He first of all described the violence of the language used, and then of the ultimatum which was presented.

Q Try to tell us what he said if you remember. What did he say about the violence of the language used? That's what we want to know.

A First of all, he started with the greeting he had received, then by describing the meeting, and then that the Fuehrer had accused him of not being a German, and had accusedhim of not having followed the German policy which existed even during the time of Hapsburg, and that he was letting the Catholics do too much. Then therewere very serious arguments between Hitler and Schuschnigg personally, during which the Chancellor felt that he personally was being attacked badly. The details of this conference I cannot now remember, but the violence, according to Schuschnigg's description, was very hard.

Q You had luncheon there, I assume, at mid-day or shortly after?

A After the conference, on or about 12:00 or 12:30, there was ajoint luncheon. There was a perfectly normal tone of conversation because in the meantime the waves had been calmed down.

Q Was Schuschnigg quite a heavy smoker?

A You mean then, or when?

Q I mean at that time, of course.

A Yes, he was a heavy smoker.

Q Now, we have heard that during that day of the conference, he was not permitted to smoke, and that you pleaded with Ribbentrop to let him have one cigarette. Now, what about that? Is that so, or is that a story?

A We were told that in the presence of Hitler, there was to be no smoking. That's true. Whether I tried to find a possibility for the Chancellor to be allowed to smoke or whether I actually asked Ribbentrop for permission for the Chancellor to smoke I don't remember, because that detail was not of any importance.

Q Well, alright. Anyhow, at this conference did Schuschnigg tell you that Hitler had told him that Seyss-Inquart would be made Minister of Security of the Government?

A I am afraid I could not understand you. There seems to be some interference.

H0156 - 0038

Q Did Hitler demand that Seyss-Inquart be made Minister of Security?

A That was one of the demands on their program.

Q Made by Hitler?

A Yes.

Q Did he also demand that Glaise Horstenau be named the Minister for the Army?

A That was the second portion with reference to which those demands were made.

Q Did he also demand that all the expelled students from Austria be reinstated?

A Yes, students who had been renounced were to be reprieved and admitted to the Universities.

Q And certain discharged officials were to be reinstated to duty also?

A Yes.

Q Second, certain officials ofthe police in Austria were to be reinstated to duty as well?

A That came under the chapter "reprieve action".

Q Were there also demands made with regard to currency exchange and customs?

A There were demands of an economic nature of every kind.

Q Now, didn't it occur to you as soon as Schuschnigg heard these demands made on you, that this conference had exceeded the limits that had been placed upon it by Von Papen and Schuschnigg? You know that right away, didn't you?

A Yes, the program was more far reaching than we expected, that's quite true, but I don't know whether Von Papen knew the questions previously.

Q My question was, did you not go to Von Papen and tell him, "This is not what we came here to do" or something like that? Didn't you have any conversation with him during one of these recesses?

A Of course, statements of that type were more far reaching than we expected.

Q What did Von Papen say?

A We had the impression that he found it awkward at that time.

H0156 - 0039

Q Didn't he suggest, however, that you agree to Hitlers demands?

A The final condition, that is to say, after some of the concessions had been achieved, certainly was recommended by von Papen because in his opinion, an agreement should be reached. The Chancellor too gave his personal word, because he did not want to leave without a result being reached. Also, the situation was not to be endangered.

Q Also, Hitler agreed that he would dissolve the new National Socialist Party in Austria, didn't he? Didn't he assure you that he would do that?

A Yes.

Q That he would recall Dr. Tafs and Leopold, the leaders of the Nazi party in Austria?

A Yes.

Q And also, you agreed to appoint Seyss-Inquart as Minister for Security?

A The Chancellor agreed with that decision.

Q And you agreed to take in men by the names of, or men like Fischbock and Wolf into the Austrian Press service?

A They were to be admitted. Fischbock was to be in the Ministry Economy, and Wolf in the Press section.

Q And you agreed also, to try to absorb some of the National Socialists int the "Fatherland Front", to absorb them into your own program?

A The description of trying to absorbe some of the Nazis into the Fatherlan Front does not meet with the situation.

Q Hitler told you that you had until December 15 to accept his terms, didn' he? I mean, February 15.

A Yes.

Q And he told you that if you didn't do so, he would use force?

A The ultimatum as Hitler had stated it was that he intended, as early as February, to march into Austria, and for the last time, he was prepared to postpone it.

Q What about these Generals, were they walking in and out while the confere was going on? Men like the defendant Keitel?

A Several times the Generals were called in.

Q Were you and Schuschnigg frightened? Did you think at one time that you were to be taken into custody or that you were to be shot?

H0156 - 0040

A That possibly we might be taken into custody, yes, but to be shot, no, We thought we may not be allowed to leave.

Q Don't you recall that you and Schuschnigg . . . Didn't Schuschnigg tell you that when Hitler called Keitel in, Schuschnigg thought it would be the end? You remember Schuschnigg telling you that, and you said that you agreed because you were frightened too?

A I am afraid I don't understand you.

Q Do you remember Schuschnigg telling you, when you were on your way back to Vienna, that he was frightened when Keitel was called in, and that he was afraid that he was going to be shot, and you told Schuschnigg that you were frightened too or words to that effect?

A No, I don't remember that conversation. Shooting was never mentioned because, as I said, we were only afraid that if things didn't go well we might not be allowed to leave.

H0156-0041

Q Very well. What was von Papen doing while the generals were moving in and out ? Did he see that as well as you ?

A Well, of course during such a heated discussion it is quite difficult to say, after eight years what each individual was doing

Q There were not too many of you there -- six or eight. Were you pretty generally in a group ?

A There were continuous changes. We were not always together. There were various combinations going on all the time.

Q Let me put it to you this way : There wasn't any possibility of von Papen failing to see the generals there that day, was there

A On that day he must have seen them when we were there.

Q Von Ribbentrop told you that Hitler was in a very angry frame of mind, didn't he ?

A Yes, we were agreed on that.

Q And he also urged that you, of course, accept the terms as the best thing for you and for Schuschnigg, didn't he ?

A At any rate, Ribbentrop at the time did not participate in that pressure. He represented the German demands as well, yes, but not in an unpleasant or violent way. Even at that time I mentioned that to the Chancellor.

Q This was the situation, wasn't it : Von Ribbentrop was playing the role of the nice man, while Hitler inside was playing the role of the horrid man, and you and Schuschnigg were being passed back and forth from one to another ?

A It was my impression, rather, that Ribbentrop was not acquainted with the subject very well and that for that reason alone he was keeping back.

Q That is interesting, and it is not altogether news in this case, but in any event, isn't it a fact that you were being played off, so to speak, between the nice man, Ribbentrop, and the bad man, Hitler ?

A You can not describe it like that because it really was not the position. We had to discuss the details with Ribbentrop, and Hitler stated that we would now discuss the details amongst us.

Q Could it be that you do not realize it yet ? Are you sure that that was not the situation, or is it only that you have not realizeddit to this day ?

A About what ?

Q That situation that I suggested -- that you were being maneuvered between the good man and the bad men.

Well, if you don't understand, I don't think we need to go on with it.

Now, how late did you stay there that day, and what time did you leave Berchtesgaden ?

A The late hours of the evening. I think it was between nine and ten, as far as I remember.

Q And when you got back to Vienna, did you tell Seyss-Inquart, during which Zernatto had been informed both by the Chancellor and myself. Later on I joined that conversation, but I had the impression that the greater part of the report had already been completed. Only details were talked about later.

Q You told the Tribunal this morning that Seyss-Inquart told you that he wanted to retain some independence for Austria--some semblance of independence, anyway. Now, you did not believe that, did you, when he told you ?

A Well, of course, I can not say Yes or No to that. I turned him down, and therefore I did not think a great deal about his political conceptions because I did not propose to enter the government, but the demand was such that it had to be regarded as being serious.

Q Well, you used some particular language when you turned him down, didn't you ? What did you say about wanting to be truthful and decent ?

A I stated at that time that I belonged to Chancellor Schuschnigg, that the laws of decency still applied to me, and that therefore I would resign with him.

Q Didn't you use the language, " I still believe in the rules of truth and decency" ?

A No, the laws regarding faith and decency were still applicable to me. I went all the way with Chancellor Schuschnigg

and I would resign together with him . You would have to know my relations to the Chancellor, and anyone who knew it would know that I could not have acted any differently.

Q I am not suggesting that. I am merely trying to show that you yourself used language in refusing Seyss-Inquart that indicated that you did not think he was truthful or faithful or decent. Isn't that so ?

A I am merely saying that I myself refused to recognize the demand. There was a difference which arose from the fact that I was a friend of the Chancellor.

Q Well, you know we have your testimony down there in Vienna, where you testified under oath before the Court, and you remember telling the judge down there that Seyss-Inquart participated in the violent removal of Schuschnigg.

A Yes. Yes, I stated that I would not belong to a government run by Seyss-Inquart since that was, after all, partly responsible for the removal of Schuschnigg's government and since I was a friend of Schuschnigg I could not participate in such a government.

Q Well, the point of it all is that, knowing Seyss-Inquart and as he had been in the closest association with the Nazis, and having had your experience at Berchtesgaden, are you serious when you tell the Tribunal that you really thought -- you really believed Seyss-Inquart when he said he wanted to maintain some independence for Austria ?

A I doubted it at the time. I doubted Seyss-Inquart. What went on in his head, I can not tell you.

Q I am not asking you for that. I am asking you what went on in your head.

Now, you had a conversation with the defendant von Papen about Seyss-Inquart not too many years ago ?

A Yes.

Q Now, tell the Tribunal when and where that conversation took place.

H0156 - 0043

H0156 - 0044

A I met him, I think, late in 1940, and our conversation turned to the events of 11 March 1938. Papen at the time used very serious, critical words on the procedure of those days with reference to Seyss-Inquart because he had done nothing for the independence of Austria and he said that he had not served German interests either. He wanted to state his criticism, and I had the impression that he was against the forced solution, against the solution by means of force, which had always happened

Q Well, I want you particularly to tell the Tribunal just what it was that von Papen said about Seyss-Inquart -- and this was

H0156 - 0045

1943, wasn't it, not 1940 ? It was when you were in Turkey and so was von Papen ?

A: Yes.

Q: Now, maybe I can help you a little if you have forgotten. Didn't von Papen say that he would not shake hands with Seyss-Inquart ?

A: Yes, he said that. He said that some time after the Anschluss he had refused to shake hands with him, and he referred to his behavior in 1938.

Q: And he said his behavior was utterly impossible?

Isn't that the language that von Papen used about Seyss-Inquart or some of the language?

A: He did speak like that.

Q: What were the other things that he said ? You have told down there in Vienna that von Papen used the harshest language imaginable in describing Seyss-Inquart and his conduct in March 1938. I think that is of some interst to the Tribunal, and I wish you would tell us exactly what it was. It is only three years ago that you and von Papen had this conversation, and you have not told us very much about it.

A: He spoke in very violent terms. He passed a judgment in which he wanted to express that Seyss-Inquart had not protected the Austrians and that he had done nothing to protect the faith of Austria or safeguard the character and interests of Austria.

That was Papen's basic thought, and his second thought was that the German interests had not been served by this either, and what he meant was that justified interests of the German Reich had been made to look wrong in the eyes of the World and that the foreign political interests of the Reich had been damaged.

That was the principal thought in that conversation, and I think he made similar remarks during other conversations with other people.

Q: All right. I am afraid I have passed on from Berchtesgaden and have omitted something that is probably of some importance.

Do you remember some time-- I guess not long before you broke up your session there -- Hitler turning to von Papen and saying,"von Papen, you made it possible for me to be Chancellor, and I shall never forget it ."

H0156 - 0046

Did you hear Hitler say that to von Papen that day at Berchtesgaden ?

A: Yes, some such remark in some such form was made.

Q: What did von Papen say ?

A: That I can no longer tell you, I can not remember.

Q: He said, "Yes, my Fuehrer," or something like that, didn't he ?

A: Yes, I assume so, because upon being addressed like that he had to answer.

Q: He certainly did not deny it, did he ?

A: I don't assume he did,but I can not remember the answer. I can only remember the question.

Q: The night in Vienna when the SS and the SA people were climbing in the windows and doors of the Chancellory, did Seyss -Inquart do anything to have them excluded

A: Not to my knowledge. I don't know; I was on the other side.

Q: Yes. It was a very tense situation, as we know. As a matter of fact, you were fearful that some harm would be done to Schuschnigg, weren't you ?

A: The situation was tense.

Q: How did you and Schuschnigg go home that night from the Chancellory ?

A: We left in three cars -- the Chancellor in one, the President in the other, and I was in the third.The departure was organized or escorted by SS men who were present.

Q: Schuschnigg was not taken home in Seyss-Inquart's private automobile by Seyss-Inquart; he was taken home by the SS; is that so ?

A: No, they departed in a car together. I heard myself how Seyss-Inquart told the Chancellor he would take him home. Whether it was the Chancellor's car or Seyss-Inquart's car, I don't know, but at any rate they travelled in the same car.

Q: Escorted by the SS ?

H0156-0047

A No, not as far as I can tell you. I don't know whether there were SS in the Chancellor's car, but the SS only escorted the actua departure from the house, and there was nobody on the car or my car, or the President's car after that, after we had left the house, I mean.

Q That is not what you told the Court in Vienna. Down there you said, "Dr. Schuschnigg and I were driven home, escorted by the SS."

A No, I said the SS escorted or conducted the departure from the Ballhaus Platz. There were about 40 SS men present who conducted the departure from there. Whether some one remained in the car after that, I don't know.

Q All right. You probably can help us clear up one other question. When Seyss-Inquart made his radio speech, he was not actually a member of the Government, was he, or was he?

A Well, there has been a lot of debate about that question. The Chancellor had resigned in the hours of the afternoon, and the President had first of all not accepted the resignation, so, therefore, he was still Chancellor and Seyss was still a Minister. Whether later on the resignation was accepted that I don't know. Some say that the President had asked the Chancellor to continue in charge. Seyss-Inquart and others think that that was not the case. Only the head of the state himself can answer that question for you.

Q As a former member of the government, I want you to look at one document, and perhaps you can tell us whether or not you have seen it before.

MR. DODD: It is 4015-PS. It becomes USA 891.

BY MR. DODD:

Q That states that President Miklas had relieved not only Schuschnigg as the Federal Chancellor, but all other members of the federal government, as well as all Secretaries of State, of their respective offices, and that is March 11.

A Yes.

Q That shows, does it not, that Seyss-Inquart was not in office when he made this radio speech? That is our understanding of it. Is that so?

A Well, I believe that I have had a lot of experience in that question because I worked with the Federal President for a long time.

Q Just tell us exactly -- is that true or not? Is our understanding correct?

A It need not necessarily be that. In practice such documents sometimes go out days later because red tape slows them up. One would have to investigate, therefore, when this was actually, in practice, carried out. I assume that it was not prepared until long after the 11th of March.

Q Was Seyss-Inquart frequently using the term "Trojan Horse" in the days preceding the events of March 12 ? Was that a common expression of his?

A He has stated a few times that he was not a Trojan Horse leader, and by that he wanted we testify to his loyalty, and he wanted to explain that it was not his task to open the back door to National Socialism.

Q Do you think he protested too much?

A Against what?

Q About not being a Trojan Horse.

A I did not hear that expression more than once or twice or three times from Zernatto.

MR. DODD: That is all.

H0156-0048

H0156 - 0049

REDIRECT EXAMINATION

BY DR. STEINBAUER:

Q I only have one brief question in connection with these last events, Mr. Witness. Didn't Seyss-Inquart also post guards ?

A Yes, guards had been posted.

Q At what time did that happen ? I mean, the actual resignation of Schuschni

A Well, it is difficult to say whether the nomination or the appointment of the new government was the time. I assume that it took place between nine and ten o'clock, since the President was having serious negotiations about the choice of a new Chancellor, and I think the former Chancellor, Dr. Ender, had been included in the debate.

DR. STEINBAUER: Mr. President, I have no further questions for this witness.

THE PRESIDENT: The witness may retire.

DR. STEINBAUER: With the permission of the Tribunal, I shall now call the witness Police President Dr. Skubl.

MICHAEL SKUBL, a witness, took the stand and testified as follows:

BY THE PRESIDENT:

Q Will you state your full name, please ?

A Michael Skubl.

" Will you repeat this oath after me:

I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

THE PRESIDENT: You may sit down.

DIRECT EXAMINATION

BY DR. STEINBAUER:

Q Mr. Witness, which functions have you carried out in the Austrian Republi

A At the end I was the President of the Police at Vienna, and Secretary of State for Matters of Public Security. Apart from that, I was the Inspector General of the Austrian Executive.

H0156 - 0050

Q Were you called to these offices at the suggestion of Dr. Dollfuss, which instructions he gave before he died ?

A Dr. Dollfuss -- the day before he was murdered, on the 24th of July -- had appointed me as Inspector General of the Police. I had enjoyed his full confidenc

Q Can one, therefore, describe you as having had Dr. Schuschnigg's confidenc as well ?

A Yes.

Q When Seyss-Inquart became Minister, were you attached to him in your capacity as Secretary of State and Inspector General ?

A Yes. When Seyss-Inquart was appointed Minister of the Interior and of Security, I joined him as Secretary of State. Consequently, I came under him initially, whereas until that time I had been subordinated directly to the Chancell as Chief of Security.

Q Did the police and the gendarmerie remain in your hands or in the hands of Seyss-Inquart, practically speaking ?

A In practice they had been in my hands.

Q Did you particularly have the task of suppressing and fighting against illegal movements ?

A As President of the Police and Secretary of State for Matters of Public Security, it was, of course, one of my leading tasks to fight against illegal movements, and particularly to fight against National Socialist aggression.

Q Did you have any connection, or did you know of any connection between Seys Inquart and the July 1934 matter ? I mean, when Dollfuss was murdered.

A No.

Q What was his attitude towards National Socialism ?

A Dr. Seyss-Inquart confessed that he was a National Socialist. However, as far as I know, the so-called 120 or 150 percent National Socialists -- that is t say, the leaders of the illegal movement -- did not consider him to be a 100 per cent National Socialist. He was, however, considered to be an very suitable pers to be used on the chess board of the National Socialist Movement as a chessman, a very suitable chessman.

Q If I understand you correctly, then, he was more a person who was led than a person who was leading ?

A It was my impression that he was more led than leading.

H0156 - 0051

Q How did you work with Seyss-Inquart in his capacity as Minister of the Interior ?

A There were no disturbances; it was a perfectly harmonious, agreeable way of working.

Q Did he exercise any influence upon the police ? Did he, for instance, call National Socialists into the corps of the police ?

A No; that happened in no case.

Q Did you have an opportunity to by-pass the Minister, reporting directly to Chancellor Schuschnigg ?

A Chancellor Schuschnigg was the Chief of the Government, and in that capacit he was, of course, my supreme superior. It was a matter of course, therefore, th I would regularly, and upon being called specially, report to the Chancellor and take instructions from him.

Q Soon after Seyss-Inquart was appointed as Minister he went to visit Adolf Hitler. Question: Was that an official journey, or was it kept secret ?

A It was official.

Q How did you come to that conclusion ?

A It had been announced. I knew about the journey; and Chancellor Schuschnig so far as I know, knew about the journey. It was pretty obvious that in his capacity as liaison man between the Austrian Government and the Reich he would have to h ve an opportunity to speak to Hitler.

Q Well then, when Seyss-Inquart came back, did he report the contents of his discussions with the Fuehrer ?

A Yes. Upon his return I met Seyss-Inquart at the station, and I asked him ho the conferences with Hitler had proceeded. Seyss-Inquart, still being fresh under the impression of the meeting and discussions, informed me of what he had stated to the Fuehrer. I still remember the inividual points exactly. Seyss-Inquart tol the Reich Chancellor as follows:

"High Reich Chancellor: I am an Austrian Minister, and as such I am bound and I have sworn an oath of allegiance to the Austrian Constitution. I have sworn an oath, therefore, to Austria's independence and unity. Secondly, I am an active catholic, and therefore I could not join or follow a course which might lead to a cultural battle. Thirdly, I come from a country where totalitarian regimes are ou of the question."

H0156 - 0052

Q Did the Reich, in spite of these views, appoint new county command officds of the illegal NSDAP ?

A Yes. As far as is known to me, on the 21st of February Klausner was appoint County Leader.

Q When Dr. Schuschnigg announced the plebiscite did he order any special measures of security ?

A Of course, the order for the plebiscite had the effect of a bomb on the National Socialists, not only on the National Socialists in Austria, bur also th National Socialists in the Reich. There was feverish activity, therefore, and considerable safeguarding measures had to be introduced.

This special activities can be explained by the fact that the National Socialists were afraid that in the event of a plebiscite the would suffer a terrible defeat. The slogans for the plebiscite would have been accepted predominantly by th Austrian population.

H0156 - 0053

It is most interesting, in this connection, to draw your attention to an article which appeared on the 11th of March in the German-Austrian daily paper, and which indicates the fear that this plebiscite would open the way for a democratization of Austria, the creation of a people's front, and consequently, later, a Bolshevist tendency. This will show that the Austrian National Socialists were conscious of the fact that they were a minority.

Q Now we come to the memorable 11th of March, 1938. When did you, as the Chief of the Executive, learn that German troops had marched into Austria?

A The 11th of March was, of course, an exceptionally exciting and eventful day. The feeling of time was completely lost during those hours. I only know that in the evening hours a report was submitted to me showing that German troops had crossed the border, a report which could not be verified, however, but which was supplemented by the fact that upsetting troop movements were taking place near the Austrian border.

Q Did not Seyss-Inquart, after Schuschnigg's resignation, say on the radio -- in order to avoid chaos -- that he was asking the population to remain quiet, since he was still Minister of the Interior and Security?

A Yes, Seyss-Inquart did make that statement on the radio.

Q Did you make any observations to the effect that before Schuschnigg resignation he, Seyss-Inquart, had given instructions, sent telegrams and put through telephone calls, or given any other news regarding the seizure of power?

A What I observed was the attitude adopted by Seyss-Inquart until the critical moment, which was a very placid one. As I have already said earlier, he did in fact give more the impression of a man who was led rather than a man who was leading. There were clear indications that he felt awkward

Q Didn't you yourself, in the afternoon or evening, have an offer from President Miklas to become Federal Chancellor?

A Chancellor Dr. Schuschnigg called me in the early afternoon, and he stated to me that there had been an ultimatum from Germany -- that is to say, Hitler -- and that the ultimatum would no longer be satisfied with a postponement of the plebiscite, but was demanding Schuschnigg's resignation. Then Schuschnigg said that he personally was ready to resign, but that he could not

H0156 - 0054

expect from his officials that Seyss-Inquart should be appointed Chancellor. He had a question to put to me, he said, and that was whether I was prepared to take over the Chancellor's office. He said that was in agreement with the President, who, a few moments later, made the same offer to me.

I refused, considering that my appointment as Chancellor would, in Hitler's eyes, mean nothing other than a declaration of war. As Secretary of State for Matters of Public Security I was at the head of the group fighting the National Socialist aggression, and therefore I was a personal opponent of Hitler's. Therefore, Had I accepted the Chancellorship, Hitler would have found it a welcome cause to give the order to the troops to march. My acceptance of the Chancellorship, therefore, would have meant the beginning of the fight against the invasion, and such a fight was hopeless, in the face of the tremendous superiority of the German armed forces, compared with the Austria armed forces and Austrian Executive.

Q Then Seyss-Inquart formed his cabinet, and you were taken over as Secretary of State. Why did you join that Ministry?

A Seyss-Inquart suggested that I should remain as Secretary for Matters of Public Security under his government. I accepted the offer, having confidence that Seyss-Inquart would remember the conditions which he had made to the Fuehrer. In other words, that there would be a Chancellor of an independent Austria. Apart from that, I was wishing and hoping that the Executive would remain in my hands, and that, in the event Seyss-Inquart had difficulties in representing the Austrian point of view, there would be some assistance for him through me. In other words, there should be an Austrian enclave around him in the cabinet of the Austrian Chancellor Seyss-Inquart.

Q Did Seyss-Inquart still, at that time, speak in favor of Austrian independence?

A He didn't speak about it in detail. Actually, that was understood to be a matter of course during that conference we had.

H0156 - 0055

Q. When did you leave that cabinet, and why?

A. During the night of the 11th and 12th of March, I took over the task of receiving the Reichsfuehrer SS. Himmler, who had been announced from Berlin at the airdrome, on that occasion did not arrive on his own, but came with an entire entourage. I cannot remember the names of the individual people who introduced themselves to me; that is to say, I could not understand very many of them. But there was one name which I did understand very well, and that was the name of Meissner. Meissner was an Austrian police officer who, on the 25th of July, had joined the National Socialist uprisings, and who had then after his collapse fled to the Reich. Now he came back under Himmler's protection.

That to me was such an impossibility that I was certain at the end that I could no longer cooperate here. When, therefore, on the 12th, in the morning, I went into the chancellor's building and was received by Glaise Horstenau with the information that Himmler had demanded my resignation, I answered, "He can have that cheaply, because I have already decided on that in the early hours of the morning".

Subsequently I informed Chancellor Dr. Seyss-Inquart that I had had knowledge of the fact that Hitler was demanding my resignation, and that, of course, I had decided to resign. I asked him, therefore, to take official notice of my resignation.

Seyss-Inquart replied, "It is right that Himmler has demanded your resignation but I am not going to have anything dictated to me from outside. At the moment the situation is such that I think it perhaps that you disappear for a few weeks. But then you must come back, because I attach importance to your cooperation."

I had maintained, however, that that would not happen. And the following day, in writing, I handed in my resignation as president of the police and secretary of state, after I had already on the evening of the 12th actually handed the affairs of the office over to Kaltenbrunner, who had been attached to me as a so-called political leader of the executive.

H0156 – 0056

Q. And then you were confined, and you still have not returned to Vienna; is that not right?

A. I beg your pardon?

Q. I said, you were then confined and you still have not gone back to Vienna?

A. First of all, I remained as a prisoner in my official apartment. I was under SS and police guard. Then on the 24th of May, two criminal policemen of the Cassel Gestapo deported me to Cassel, where I was forcibly maintained until the liberation by the Allies.

DR. STEINBAUER: I have no further questions of this witness, Mr. President, and perhaps this would be a suitable moment for a recess.

(A recess was taken)

THE PRESIDENT: Do any other defendants' counsel want to ask any questions?

(No response)

THE PRESIDENT: The prosecution?

MR. DODD: No questions, Mr. President.

THE PRESIDENT: The witness can retire.

H0156 - 0057

DR. STEINBAUER: Mr. President, may I now call the next witness, Dr. Friedrich Wimmer.

DR. FRIEDRICH WIMMER, a witness, took the stand and testified as follows:

BY THE PRESIDENT:

Q Will you state your full name, please?

A Dr. Friedrich Wimmer.

Q Will you repeat this oath after me:

I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

THE PRESIDENT: You may sit down.

DR. STEINBAUER: Mr. President, with the witness Skubl I have finished the questions concerning Austria and I shall not proceed to deal with the Netherlands.

DIRECT EXAMINATION

BY DR. STEINBAUER:

Q Witness, were you, from July, 1940 until May, 1945, general commissioner for the internal administration and justice in the Netherlands?

A Yes.

Q In that position did you have to deal with internal administration, justice, education, health, archives, museums and the legislature?

A Yes.

Q Were you not also, at the same time, the deputy of the Reich Commissar?

A In exceptional cases, cases of emergency; not otherwise.

Q Did you also participate in the weekly conferences of the general session with the Reich Commissar?

A Yes.

Q Therefore, you are informed about the events in the occupied Netherlands rather completely, are you not?

A Generally, yes.

Q Now I ask you, was the German police a part of the offices of the Reich Commissar or wasn't it independently subordinate to the Berlin office?

A The German police was an organization which was separate from the Reich Commissar's office, and as far as decrees and organization was concerned, they

H0156 - 0058

were subordinate to the respective offices in the Reich.

Q That is to say then, immediately subordinate to the Reichsfuehrer SS, Himmler?

A Immediately subordinate to the Reichsfuehrer SS.

Q Did the German police, apart from the task of order police and security police, did they have special tasks in the Netherlands?

A They had quite a number of special tasks in the Netherlands.

Q Could you ennumerate these tasks?

A I could not give it completely, but, for instance exclusively in their field was the fight against the resistance movement in the Netherlands; also belonging to their tasks was the establishment, and supervision of concentration camps. Furthermore, removal of Jews from the whole body of the Dutch nation was exclusively their task.

Q Now, we come to internal administration. At the head of the foreign ministries there was one general secretary in each; that is to say, a Dutchman. When they resigned, were they persecuted?

A No. The Reich Commissar had declared to the Dutch general session that if they should feel that decrees or demands of the occupation powers would make it difficult for them, then, without having any fears, they could approach him and explain to him their difficulties, and in that case, if they wanted to, he would let them resign from their office in such a manner that they would have to fear no difficulties and no troubles of any kind; and that, also, as far as financial matters were concerned, they could feel sure that they would get their pensions.

Q Did the Reich Commissar also dismiss provincial commissars?

A He did dismiss provincial commissars, but these exchanges - - and I recall two cases - - these exchanges took place only because the provincial commissars died.

Q How was it about the Mayor?

A As far as the appointment of mayors is concerned, in

principle, the same could be said as for all other officials in the Netherlands. The mayors in the Netherlands, as in most of the nations, were not elected to office. They were employed officials, civil servants, in that sense of the word. They had been appointed by the queen, even the mayors of the small communities. Since the head of the state was not present in the Netherlands, the Reich Commissar was confronted with the necessity of regulating the appointment and dismissal of mayors and keep up the regulations in that manner. Insofar as the most important positions of the state were concerned, he reserved the right to make appointments, where as in the case of large numbers of appointments of lesser importance, he put that into the hands of the general secretary.

Q So if you look back today and examine the question of how conditions were between '40 and '45 concerning the civil servants in the Netherlands, what can you state in that respect ?

A I believe I may say that at the end of the period of German occupation the majority of the civil servants were in office who had been in office when the German occupation force came into the Netherlands.

Q Seyss-Inquart has been accused of dissolving the political parties. When and why did that take place ?

A The dissolution of political parties was necessitated by the fact that some political parties displayed an attitude which, in critical times, was not bearable for the occupying power Apart from that, in an occupied territory it is generally impossible to deal with political parties at all. It came about that we received report from our foreign services about conspiracy of various natures, and the Reich Commissar saw the necessity to dissolve the parties. But as far as the political institutions were concerned, he did not remove the parties as such. The institution of parties still existed.

Q It was suggested by the Reich to reorganize the administration and to divide the Netherlands into five administrative

H0156 - 0059

H0156-0060

districts instead of the traditional provinces. Did Seyss-Inquart do that ?

A The Reich Commissar, whenever such suggestions or demands were made, always refused them. He could do that with reason, because the Dutch administration had been conducted at a very high level and the Reich Commissar counted on it. He could do so in the beginning on the basis of many promises; he said the Dutch administration would be loyal to the occupying power.

Q Now we were confronted there also with a party which was very close to the National Socialists, the NSB. Did that party gain a leading influence in the administration ?

A : The NSB, as a party, had no influence and gained no influence at all in the administration. Of course the occupying power approached the NSB and consulted the NSB in individual case because each occupying power in history, I believe, as well as in our day, ist not going to approach those parties or groups which have hostile attitudes to the occupying power.

Q Didn't the leader of the NSB, Mussert, try to create a similar situation as it existed in Norway under Quisling; that is to say, that he would become Prime Minister of the Netherlands'

A That tendency Mussert definitely had had, and again and again he expressed it; and I can say that by doing so, he brought the Reich Commissar into a very disagreeable situation. The Reich Commissar always rejected it.

Q Another question. Did Seyss-Inquart in any way exert pressure in religious matters on the population of the occupied territory ?

A No.

Q Did he, in the field of education, issue decrees which would have reduced the rights of the Netherlanders ?

A No.

Q Didn't he sponsor and favor the Dutch Red Cross, although there were cells of the resistance movement in it ?

H0156 - 0061

A He not only permitted the Red Cross to carry out its functions without difficulty, but, as you say, he even favored and spons ored it. As far as the political attitude was concerned, he would have had plenty of reasons to interfere because in the Red Cross illegal radio stations had been found.

Q They were centers of restistance ?

A Yes.

Q Furthermore, he has been accused of interfering in the legislation in the question of citizenship and also in the question of martial law. You were in charge of the Justice Department. What can you say about that, quite briefly ?

A Interferences of that kind have been made, but that occurred because, from the point of view of warfare and the armed forces especially, they become necessary, for those Dutchmen, from the point of citizenship, who had entered the German Army, wanted to have the assurance of also getting their German citizenship. The Reich Commissar, however, was of the opinion that by acquiring German citizenship they would not have any difficulties in Holland itself, as decreed; and that can be found in the respecxtive decrees, that these Dutchmen who acquired German Citizenship should be permitted to keep their Dutch citizenship, so that by doing so they would not lose their own nationality.

So far as martial law is concerned, the necessity arose that if soldiers wanted to marry Dutch girls, the approval of parents, and not for political reasons, may have been refused. That approval was of some importance in that connection because the parents, contrary to many other nations, retained this right of approval until the thirtieth year of a daughter.

H0156 - 0062

Q Now I come to another chapter. That is the question of the so-called Standgerichte, military courts. Will you tell us how these military courts were organized and set up and how long and when they were in session.

A The creation of military courts was seen as a necessity after a general strike had broken out in Amsterdam and to create a legal basis in the event of similar occurrences in the future, or at least to stop them immediately after they had broken out, and stop them effectively on the basis of the respective law.

How these military courts were organized and when they had to function can be seen in the decree by the Reich Commissar. It is stated therein. However in order to answer your specific question about the composition of these military courts, I can only say from memory that the president of these courts was a judge, that is to say, a judge who had all the requirements which a judge in the German Reich had to have.

Q That is the essential point, and if I understand you correctly, although these courts were called police courts there was a judge who was the president of the court.

A Yes, that is correct.

Q Is it known to you whether Seyss-Inquart had established so-called collective fines over cities and communities?

A The Reich Commissar actually established just fines, collective fines. The largest one, I believe, was the one against Amsterdam on the occasion of the general strike which I have already mentioned. The fines were decreed on the basis of existing decrees, and they were proclaimed by an official memorandum and that by the police.

Q If I understand you correctly, therefore, these collective fines -- you mentioned the words "general strike" -- were used when actions of a larger group, a community, had occurred, and not actions of individuals.

A Yes, the collective fines were imposed in cases of violations which were committed by a large part of the citizens of the community in question.

Q I believe we can conclude that chapter. However, you didn't tell me how long the so-called military courts were in session.

A They were in session as long as that decree provided. It was two

H0156 - 0063

weeks, 14 days, and that was the only time that martial law had been imposed in Holland by the Reich Commissar, that is, if you do not consider the state of emergency after the invasion as such.

Q Now I come to one of the most severe accusations raised against my client. That is the accusation that contrary to international law he had hostages shot or participated in some way in their execution.

With the permission of the Tribunal I put to you two statements which yesterday were put to my client by the Prosecution. One is a statement by General of the Air Force Christiansen, of the 20th of February, 1946, and the other one is also an interrogation with the Higher Police official Dr. Schoengart, F-386.

Will you please look at it and tell me what you know about these questions. Take your time -- I remind you of your oath -- and answer these questions as far as youcan do it in good faith.

Have you read it?

A No, not yet.

Q Witness, I will help you. Are you through?

A No, I am not through yet, but please go ahead.

Q Do you know that in August 1942, on the occasion of an act of sabotage in Rotterdam, hostages were shot?

A Yes.

Q Why were these hostages shot? On whose orders?

A On the Rotterdam incident, I believe that it is quite well known what that dealt with. It was an explosion and an attempt on a vacation train of the armed forces. In that affair, the armed forces approached the Reich Commissar and that --

THE PRESIDENT: (Interposing): That isn't an answer to the question. The question was: Who gave the order?

THE WITNESS: The order for what?

BY DR. STEINBAUER:

Q For the shooting of hostages.

A The order for the execution, I believe,was given by the police.

Q What did the Reich Commissar have to do with it? You have read here what Christiansen is accusing him of in that connection.

H0156 - 0064

A The armed forces approached the Reich Commissar because it was customary that in important matters the tw o offices, that is, the Commander of the Armed Forces and the Reich Commissar, got together and discussed these things.

I recall that the Commanding Officer of the Armed Forces, in a very determined manner, had demanded that an example should be made so that such cases might be prevented in the future. On the part of the armed forces it was stated that they would know of hardly any other means than the shooting of a considerable number of hostages.

I do not recall any more today what figure was mentioned, but as far as I do remember, the figure was around 50.

I also recall that on the part of the Wehrmacht it was stated that they would dispense wi th such action against hostages only if the assurance could be given by the police that perhaps on the basis of material which the police had in their hands there was a ch ance of finding the people who committed that attempt, and they might be brought to punishment by the German court, that is to say, by the court of the armed forces.

H0156 - 0065

On the part of the Wehrmacht it was also pointed out how, in that period, the resistance in the Netherlands began to organize in increasing measure, and that there was a notable increase in sabotage and other acts hostile to the occupational forces. I also recall that it was pointed out that if the armed forces and police would have been present in larger numbers than was actually the case, it would not have been necessary to take a severe step of that kind. The forces at that time, at the disposal of the Netherlands were very small, and in case of an increase in the resistance movement, the position of the armed forces in the Netherlands would have been severely damaged.

Q. Witness, I shall put several questions to that we can go ahead.

You have stated that the commanding officer of the armed forces came and reported that because of those attempts of explosions, he had to shoot hostages.

A. Yes.

Q. It is known to you that there was a Reich decree stating that hostages in Reich occupied territory should not be tried by the Court but turned over to the Police, do you remember that ?

A. I don 't think that that was the case at that time. Especially if you refer to the so called "Nacht Und Nebel" ("Night and Fog") decree which, in my recollection, is of a later date. We remember, however, that an order was mentioned at that time but I believe that order was one which was given only exclusively for the military sector. At any rate, I don't know about the wording of that order.

Q. Is it known to you that the Reich Commissar used his influence to see that the number you mentioned, 50 -- in reality, it was only 25 --, that that number was also to be reduced to 5 ?

A. That is known to me.

Q. And that he succeeded ?

A. And that he succeeded.

Q. And that he particularly succeeded in that fathers of families were not executed ?

A. Yes.

H0156 - 0066

Q. That concludes one case. I put to you another case. That is the case of the attempt made on the life of the Higher SS and Police Leader, Rauter where, in fact, more than 150 persons were executed as hostages. Did you read that ?

A. In part.

Q. Please read it all then.

THE PRESIDENT: Dr. Steinbauer, why is it necessary for the witness to read the whole document ? You can put the facts to him.

DR. STEINBAUER: Yes.

BY DR. STEINBAUER:

Q. Witness, at that time, it was demanded that as a reprisal for the attempt on the Police and SS Leader, hostages should be shot.

A. Yes.

Q. Who ordered that and who carried it out ?

A. I know of the case and I know it from the report of Brigadefuehrer Schoengart, who was, at that time, the chief of the Security Police, he had approached me to find out what his functions were because Rauter could not be in office and he had to send a proclamation and had to give his official title. On that occasion he told me the whole story, and he also told me that he had talked to Berlin, to find out what they would consider necessary as reprisals for the attempt on Rauter. From there the demand was made to execute a large and considerable number of hostages. He mentioned a figure to me which was something like 500, at any rate, not below 500, then he also told me that he had talked to the Reich Commissar and told him about the demand from Berlin.

Q. Would you be more specific please, Berlin is very large.

A. That was the Reichsfuehrer SS. Of course, it is quite clear that when it is concerned with one of the Higher Leaders of the Police and SS, one had to approach the Reichsfuehrer SS personally, and not his office. He also told me he approached the Reich Commissar for that, and that the Reich Commissar who, as such, was not competent to deal with that matter, had asked him to tell the Reichsfuehrer Himmler. He wanted to suggest to him not to carry out such a large number of executions.

H0156 - 0067

everything was done by telephone thereupon. Of course, the Reichsfuehrer agreed to reduce the number and, I believe, on the basis of several telephone conversations back and forth, in the end a number of about 200 or 150, I cannot say that exactly today, was decided upon.

I am convinced that if, on the part of the Reich Commissioner via Schoengart that request would not have been put that certainly, the number demanded originally by Berlin would have lost their lives, so that one can say justifiably in this case, that the Reich Commissioner saved the lives of several hundred Netherlanders.

Did these people who were actually shot, were they people who were caught at random in the streets or were they people who had already been sentenced ?

H0156-0068

A Of course, on this point, I can only report what, at that time, Brigadefuehrer Schoengart told me during that case. Of course, I have no reason to assume that at that time he did not tell me the truth. He told me that only such persons would be taken who already had been sentenced, so that it was only an execution which would have taken place later, and if that number was not sufficient, then it might happen that others might be used who in case they had been put before a court, would probably be sentenced to death anyway.

Q I believe that concludes this chapter, but I will only ask you what happened to the hostages who, in the way of reprisals regarding the Dutch East Indies, were taken as hostages and sent to Buchenwald.

A A large number of these hostages, or maybe all of them, were after some time -- and I don't recall how long that was -- when complaints came about the treatment of them, brought back into the Netherlands until the majority was released. As I remember it, not all at one time, but gradually.

Q Was the destruction of the small town of Putten, which was destroyed on account of serious sabotage attempts, was that ordered by the Reich Commissar?

A It was a purely military affair where an attempt was directed against the armed forces, and the armed forces treated the incident.... The order was given by the Commander of the armed forces, and if I remember correctly, the Reich Commissar and I were informed about the incident after the execution had taken place.

Q Then, I shall come to another chapter, and that is the one against the so-called enemies of the State.

Yesterday it was mentioned that the property of the Free Masons and the Bible Research Group was confiscated. I should like to ask you, so that there will be no mistake, whether it was only the property of the organizations that was destroyed, or was it the property of members? That is assuming, for instance, not only property of Free Mason lodges, but also property of members.

A In all these cases, all this property was property that belonged to organizations, never to individuals. If property of individuals was destroyed, then it was an abuse of the officials who did it. I cannot remember any of it anyway.

Q The Dutch Jews were also considered so-called enemies of the State.

H0156 - 0069

Who was responsible for the treatment of the Jewish question? Who was competent?

A The competence for dealing with the Jews rested, from the very beginning, with the Police.

H0156-0070

Q Now, we have an entire list of decrees here which bear the name of Seyss-Inquart and which show interference with the liberties of the Jews. Can you remember when that legislation against the Jews started and in what form?

A The development is briefly stated as follows: Seyss-Inquart was confronted with the thought of dealing with the Jewish question in the Netherlands. At first he rejected it, and in one of the first discussions, it was ordered that this question should not be treated.

After a certain length of time--it may have been a few months --the Reich Commissar mentioned that he had received the order from Berlin to deal with the Jewish problem because, on the occasion of various movements and actions which were mentioned, as conspiracies, Jews had participated in a relatively large number.

Apart from that, one had to expect that if the war would last a longer time, the Jews, who naturally because of the treatment they had undergone were no friends of the Germans and could not be, that these Jews, if the war were to last longer could become dangerous and that, therefore, they should be considered as enemies, not in the formal sense but practically so.

The Reich Commissar approached that decree with hesitation, although in the conference he pointed out that he could not help doing so because he could not assume the responsibility.

If I remember correctly--and you can see that from the decree of the Reich Commissar--at first the only task undertaken was to register the property of the Jews, then to prevent German domestic servants being in Jewish households. There were quite a number of reports, and then when Berlin was more insistent in that question, the Reich Commissar finally decided to decree a registration of all Jews. It was pointed out particularly that one had to know, at least, where the Jews were because only in that manner could security and control on the part of the police be made possible.

Those were measures which were far behind those which had been carried out in the Reich at that time.

H0156 -0071

Then there was more pressure. I do not know whether that was Heydrich at that time who did it or whether he was at that time in the Netherlands. I have never seen him. I know only that on two occasions at least he visited the Reich Commissar in the Netherland

At any rate, in the course of the year 1941 and then especial in 1942, there was pressure in the direction of solving that proble The Reich Commissar at first believed that he could fulfill these demands by bringing the Jews together in one place in the Netherlan where they could be more easily supervised and watched, and that is how the thought arose that in Amsterdam, one, two or three district of the city should be used to house the Jews there, which was also connected with the necessity to resettle a considerable number of non-Jewish residents of the Netherlands because one could not solve their problem otherwise at that time.

The non-Jewish Dutch--

THE PRESIDENT: All this evidence that the witness is giving is all in the decree and has already been given by the defen dant, has it not? What is the difference?

DR. STEINBAUER: Yes

THE PRESIDENT: What is the point of it?

DR. STEINBAUER: Mr. President, I only wanted to say one thing, and that is that on such an important question I wanted to have confirmation briefly by the witness.

THE WITNESS: I haven't much more to say.

BY DR. STEINBAUER:

Q All right, I shall summarize. It is correct that the Jews were put together in a Ghetto in Amsterdam?

A Yes.

Q Is it correct that Heydrich demanded the evacuation of the Jews?

A Yes.

Q Is it correct that the Reich Commissar tried, insofar as it was possible under existing conditions, to get more humane methods in the evacuation of the Jews?

H0156 - 0072

A Yes.

Q I believe that that concludes that chapter.

There were also concentration camps in the Netherlands.

H0156-0073

Is it known to you that Seyss-Inquart had these camps inspected by commissions of judges and corrected abuses?

A Yes. Not only concentration camps, but camps in general.

Q At the end of 1944 and in 1945 there was a large scale action to recruit all people in Holland able to bear arms. Was that action by the Reich Commissar or by a different office?

A That was an action of the Reich, primarily an action of the armed forces.

Q Why did that action take place?

A It took place because there were objections, there was concern in the critical situation of that time that the part of the population that was able to fight should not remain in Holland, first, because a large number of former prisoners of war had been released by order of the Fuehrer in 1944, although later a large part of them had been called again. They were brought back to the Netherlands. Secondly, during that time, the resistance movements increased greatly, and so it was stated that, from the military point of view, one could not assume the responsibility of leaving that part of the people able to bear arms in the Netherlands.

Q Did the Reich Commissar, in order to moderate that action, issue so-called "Freistellungs Scheine" -- release slips -- and was not part of the population taken for labor commitments?

A As far as I know, yes, but I have no detailed knowledge of it.

Q Do you know what happened to the diamonds confiscated after the battle of Arnheim?

A These diamonds were taken by a German office in Arnheim, I believe, still under artillery fire, and they were brought to Berlin after some time. From there as I have heard in the Netherlands, after the surrender, they were returned to Amsterdam.

Q How was the financial economy in the administration? Was there a generous program in the use of tax money?

A I am not really competent in that field, but about that the General Commissar for Finance and Economy could say much more and with much greater authority than I can, but so far as my impression went, I may say --

THE PRESIDENT: If he is not competent to speak about it, I do not see why he should speak about it.

H0156 - 0074

DR. STEINBAUER: Mr. President, the witness Fischboeck can not be found, but as a deputy of the Reich Commissar, this witness should know something about it. I will ask in detail.

BY DR. STEINBAUER:

Q Did the Reich Commissar in his budget save large sums of money and deposit them in a special fund?

A Yes.

Q You know nothing about currency restrictions?

A No.

Q How were raw materials and foodstuffs requisitioned in the civilian sector of the administration?

A By decrees which were published by the Reich Commissar. It can be seen in the decrees — as a matter of principle it was so — that the requests were sent from the Reich to the R ich Commissar. The Reich Commissar passed them on to the Dutch offices who were competent, and they then carried out those requisitions.

Q So it was not the German offices but the Dutch offices who carried them out?

A Yes. They got the authorization by a special decree.

Q Did the Reich Commissar or his offices or any of his offices take anything from the large museums?

A I did not quite understand that. From where?

Q From the public museums.

A No. I do not recall one single incident, and I would have had to know about it because that was under my competence.

Q Yes, that is why I asked you. Were there any archives that were carried away?

A Generally not. On the whole, no, but there was an exchange which had been considered even before the war of the material in archives, and that was dealt with. There was an exchange between Dutch and German archives, after the so-called principle of Provenience. That is where the archives came from.

H0156 - 0075

Q Was it possible for everybody to confiscate what he wanted, or was that regulated in any way?

A No, that was regulated, and the respective regulations were repeated by a very stern decree of the Reich Commissar, I believe during the last year, and anyone who transgressed these regulations was seriously reproached. There were only two offices which could confiscate, and those were the Police and Armed Forces.

Q In conclusion, I should like to refer once again to the armed forces action. Was that stopped in the fall? By "armed forces" I mean the recruiting of anybody in the population who was able to carry arms.

A That was stopped on the basis of an objection made by myself to Colonel-General Student, who , at that time, was Chief of the Army Group, and under whose jurisdiction the Dutch military sector also came at that time.

Q Another question. Do you still remember the Jewish Library Rosentaliana? What happened to that?

A Yes. I believe that remained in the Netherlands.

Q Shouldn't that have been returned?

A Yes. There were attempts, but since that library was public property, the property of the City of Amsterdam, the Reich Commissar, upon my suggestion, decreed that that library had to remain in Holland.

DR. STEINBAUER: Mr. President, I have concluded the questioning of this witness.

THE PRESIDENT: Do other defendants' counsel want to ask questions?

(No response)

Do the prosecution wish to cross-examine?

CROSS-EXAMINATION

BY M. DEBENEST:

Q Witness, you were chosen in order to have the functions of General Commissar in the Netherlands. You were chosen by Seyss-Inquart, were you not?

A Yes.

Q You knew Seyss-Inquart, and you had known him for several years, had you not?

A Yes.

Q Had you not been one of his co-workers ever since 1938?

H0156 - 0076

A Yes.

Q Is it true that in the course of the occupation of the Netherlands a large number of members of the NSB and of pro-German elements were nominated not only to leading positions, but also to subaltern positions in the Dutch police, and that their task was to execute orders issued by the occupational authorities, such as the arresting of Jews, of members of the resistance, and of hostages?

A I can confirm the fact that members of the NSB and of groups friendly to the Germans were put in high and low positions by the Reich Commissar. However, as to their proportional part within the total of Dutch civil servant employment in the civil sector, I believe at the end of the occupation period the participation of these groups in proportion to the Dutch population was not large.

Q I spoke to you very clearly of the police, did I not? You understood "police", did you not? I wish to stress this point.

A You mean only the police?

Q Yes, I said the police.

A Yes, that is known to me. However, I do not believe that those members of groups friendly to Germans received special tasks: I believe that they received those tasks just as other civil servants in the same positions. I cannot say anything in detail about that, because I had very little to do with the police.

Q When civil servants of the Dutch police refused to implement orders which had been given to them by the occupational authorities and abandoned their posts, did the German authorities not take members of their families as hostages, women and children, for instance?

H0156 - 0077

A That I cannot recall.

Q In no case?

A Please?

Q In no case?

A That the members of familiesof police officials were arrested? Members of families?

Q Yes, of those who refused to implement the orders of the German authorities.

A I don't remember that.

Q Then perhaps you may remember that members of families of Netherland citizens, who had joined the resistance in one way or another, had been arrested as hostages.

A I have heard about that.

Q There were some hostages arrested in such cases, for example, were there not? There were hostages arrested in those cases?

A You callit "hostages". Do you use that expression also for cases where the individuals did not expect that they would have to lose their lives?

Q So far I have been asking you the questions, and you have been answering them.

For instance, did you not receive protests from the Board of the University of Amsterdam, protests against the fact that the wife and children of a professor of that University had been arrested as hostages?

A I do not remember that. It is possible, however, that such a complain came to the Main Office, which belonged to my Commissariat; that is, the Main Office for Education.

Q In any case, you don't deny this fact?

A I could not deny it a hundred percent, but I don't know anything about it.

Q Another question. As a result of the declaration of loyalty which was imposed on the students, as to those who refused, were they not forced to present themselves immediately for work, and were they not deported to Germany without having to await the age of enlistment?

A Yes, but not in the labor service. You mean the labor commitment, Arbeitseinsatz?

H0156 - 0078

Q That is of little importance; but they were deported to Germany for that reason, were they not?

A Yes, on the basis of a decree by the Higher SS and Police Leader.

Q Isn't it true that numerous and deep reforms were introduced by the Reich Commissar in all the activities of the life of the Netherlands people, and that these reforms were all contrary to the Constitution?

A One could not know; one could never ascertain that.

Q But there were such reforms, weren't there?

A Certain reforms, yes, which were caused by the necessities of war and the fact of the occupation. And there is a third element, which was that there were measures, necessitated by the absence of the head of State and the Government.

THE PRESIDENT: Don't you think it would be better to put the particular points you want to him, rather than general questions, which will enable him to deal with the matter at length?

M. DEBENEST: Yes, Mr. President.

BY M. DEBENEST:

Q Did the Civil Service in the Netherlands enjoy freedom?

A Yes, a great deal of freedom.

Q I am going to read to you a passage from a report of the defendant Seyss-Inquart, a report drafted on July 13, 1940. You willthen tell me whether you still maintain the reply that you have just given to me. This is what Seyss-Inquart wrote:

"The Civil Service" -- and he means the Civil Service in the Netherlands -- "finds itself at the present moment in a sufficient and progressive manner under the direction and control of the German authorities."

Is the answer which youhave just made in agreement with what Seyss-Inquart wrote?

A If in that report by Dr. Seyss-Inquart mention is made that the control was in German hands, that can only mean that the supervision was in the hands of German authorities. It was a matter of course that the German occupation authorities reserved for themselves a certain control and supervision over the most important acts of administration and government; and if everything went as it should, important decrees could not be issued without the approval of the occupying power.

H0156 - 0079

Q That is enough. The Tribunal will appreciate your answer, and the document. Will you explain why a civilian government was instituted in the Netherlands, whereas no such government was set up in other countries such as Belgium, for instance?

A I do not know the real reason for that, but from what I have heard and could find out myself, the main reason was that Germany put much emphasis on establishing a good relationship with the Netherlands. The leaders in the Reich probably thought that it would be possibly easier with a civilian administration than with armed forces.

Q Was not one exactly aiming at political ends in this, and these aims were to put the country in the hands of the Nazis, in order to establish some sort of federation of Germanic stages?

A From what I have learned from talking to the Reichskommissar about such things, I have always found that he was of the opinion that the Netherlands people were an independent and individual nation and should remain independent and sovereign as a state. That during the period of occupation the Reichskommissar and the German administration dealt and had close contact with those partisan groups who were friendly with the Germans goes without saying; and I believe I do not have to give any reasons for that. But that the Netherlands during a period of occupation were not going to accept the political ideology of the occupying power was quite clear to the Reichskommissar such as it would be to anybody who would judge the conditions at that time.

Q You said a few moments ago, if I understood correctly, that the Reich commissar did not want to force the General Secretaries of the Netherlands to make decisions which might be contrary to their conscience, and if they felt uneasy about it, they could ask him to grant them dismissal; is that what you stated?

A Yes.

Q Did he send away any secretaries general who had not asked for resignations?

A There was only one exception, an exceptional case, that of General Secretary Spitzen. That was the secretary general who did not carry out an

H0156 - 0080

order by the Reich commissar, and still did not hand in his resignation.

Q Who was this secretary general? In which department? In which division?

A That was the ministry that was responsible for canals, canalization, water, roads, and channels.

Q Is that the only case? Is that the only case that you knew of?

A That is the only case of which I know.

Q In what year was that?

A That, I believe -- one moment -- at any rate, that was in 1944; I believe in the summer.

Q Do you not remember the dismissal of the secretary general for national defence, Mr. Rinjolin?

A The dismissal of the general secretary for national defense was not under the competence of the Reich commissar, but under the competence of the armed forces commander, because all military matters on the basis of the Fuehrer Decree came under the competence of the military commander.

Q Why was he dismissed?

A That is not known to me.

Q I will remind you of it by means of Seyss-Inquart's report, and then we will see whether this was in agreement with the head of the Wehrmacht. This is what the defendant writes: "One of the secretaries general --

THE PRESIDENT: (Interposing) M. Debenest, the witness does not know anything about it, apparently.

M. DEBENEST: He said that he does not know the reasons, Mr. President,

H0156 - 0081

but he added that it was in agreement with the military authorities.

THE PRESIDENT: It is a matter which would come under the competence of the military authorities; and he does not know about it. That is what he said.

THE WITNESS: All the matters of the ministry for national defense were under the competence of the armed forces commander, because -- and that is quite clear -- everything which was carried out in the Netherlands in the military field was carried out by the ministry. And it is clear that the ministry was under the competence of the armed forces commander.

THE PRESIDENT: If you have a document which proves that the man's dismissal was done by Seyss-Inquart, I suppose you can put it to him.

M. EBENEST: I wanted simply to demonstrate that the answer he gave was inexact, and I wanted to read four lines of the document.

THE PRESIDENT: As I said, if you have a document which proves that the man's dismissal was by Seyss-Inquart, you can put it to him.

M. DEBENEST: That is what I intended to do, Mr. President.

THE PRESIDENT: Do it; put it to him, then.

M. DEBENEST: I do not have theoriginal in German. I handed it in yesterday evening.

THE PRESIDENT: Read it to him, M. Debenest. Read it to him.

M. DEBENEST: That is what I am going to do, Mr. President.

BY M. DEBENEST:

Q. That is what Seyss-Inquart wrote:

"One of the secretaries general tried to appeal to the authority of Winkelmann"-- Winklemann was the military chief -- "concerning the question of the continuation of work in armament factories for the Wehrmacht".

A. One moment. I did not understand that. Will you please read the last line once more?

Q. ". . .concerning the matter of the continuation of armament factories for the Wehrmacht. But the civil servant was immediately dismissed."

A. But that does not say that the Reichs commissar dismissed these officials.

Q. Certainly it is not said that the Reich commissar did it; but it is none the less clear in this report that the Reich commissar indicates here that if a civil servant, no matter who he may be, does not obey the orders which are given to him, he is fired. And he quotes this case as an example.

A. But this is the military sector. What I have said before deals only with the civilian sector. That the Reich commissar speaks about other matters in a report to Hitler is quite possible, because he was charged to take care of the interests of the Reich. And he reported about other things to his superior, also, besides those which were within his competency.

I do not know, either, whether by that official mentioned here one means the general secretary for national defense.

Q. Very well. We will leave this question. Have you not demanded that the secretary general for education whould have at his disposal the professors and the laboratory in Leyden for German atomic research?

A. But only in the Netherlands; not in Germany.

Q. But if it was not for Germany, the Secretary general for education had all freedom to decide himself; you did not have to intervene, did you?

A. No. That was a German measure which had been demanded by the Reich and which was now carried out in that manner, that all materials, machinery, and so on, remain in the Netherlands, and German scientists should be given opportunity there to carry out their research. I do not believe that that dealt with atomic research.

Who said that?

Q. You claim that important public libraries and private libraries were not confiscated nor transported to the Reich? You said so a few minutes ago; isn't that a fact?

A. Just now? I did not talk about libraries just now

Q. I mean earlier, when Seyss-Inquart's defense counsel was questioning you, did you not say, unless I misunderstood you, that no libraries coming from the Netherlands had been transported to the Reich?

A. I did not say that. Will you please show me that in the transcript?

H0156 - 0082

H0156 - 0083

Q. It is doubtless a mistake.

A. I beg your pardon?

Q. I will pass on. Were the professors of the University of Amsterdam not threatened with the death penalty if they handed in their resignations, and did you not threaten them yourself?

A. I have neither expressed such a threat, nor do I know of any threat of that kind. I consider it quite impossible that anybody could have expressed such a threat.

THE PRESIDENT: We shall adjourn now.

(The Tribunal adjourned until 1000 hours, 14 June, 1946)